Building Capacity of
National Human Rights Institutions:
The Case of Nepal

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Foreword

The ongoing armed conflict between the Communist Party of Nepal (Maoist) and His Majesty’s Government is at present the most pervasive theme that confronts our motherland.

The situation of conflict has affected our society, communities, the national economy, the quality of governance, and the basic human rights. It has impacted upon the psychology of the common people, the children, women and the aged alike. The whole country is under immense stress due to the prevailing conflict. The National Human Rights Commission, which is a small statutory organisation with the responsibility for the promotion and protection of human rights, has also been pre-occupied with manifold challenges due to the prevalent situation since its creation in the year 2000. The reason is very clear: the ongoing conflict has resulted in massive human rights violations throughout the country. Unless the conflict is tackled and violence is brought to a halt, the human rights of the people will continue to be in jeopardy.

In fact, there have never been societies without conflict. There is nothing strange about it. In fact, conflict is a process of change. It is embedded in relations at the individual, interpersonal, organisational, community, national and international levels, and includes psychological, socio-cultural, spiritual, political, historical, and economic dimensions. We must adopt multi-faceted approaches to develop better understandings of conflict situations and their solutions. The real problem starts when we ignore legitimate solutions to the conflict that could benefit the society in the long run. What benefits the society in the long run is a regime of human rights where everybody is equally protected and empowered. The process to ensure this must be participatory and reflective of everybody's involvement in decisions and actions. In other words, a system of democratic governance is a must for it.

As we have seen elsewhere, endeavours involving contribution from all spheres of the society are required for successful conflict transformation and social change. In the same vein, all people in the country need to be empowered and protected by the state machinery. It is only through empowerment that enables people to openly and directly influence the conditions and decisions that govern their lives. Social responsibility, justice, and processes of healing acknowledge and correct inequities and injustices, and promote individual and community healing. Such a process must help build relationships and confidence in the people, make the skills and processes of conflict transformation accessible to all, and provide *pro-bono* assistance to those in need who lack available resources. In fact, there is always a need to develop the values into an inclusive, participatory and flexible national structure to encourage economic growth and conflict resolution.

In this regard, in recent months, the National Human Rights Commission organized several activities focusing on the issues concerning the protection of human rights in the context of conflict. One such significant event was the organisation of a series of lectures on the issue of transformation of the ongoing conflict.
All these lectures were dedicated to a great son of Nepal, who started contributing his lifetime career to the cause of nation building first by writing about heroes and builders of our beloved country. This great Nepalese is Late Rishikesh Shaha, who was a notable scholar, academician, historian, politician and diplomat. He was not only one of Nepal's first human rights activists and organizers but also a great patriot. He was a brilliant man of vision and imagination. His life was thus dedicated to the service of Nepal and humanity as a whole. This book, containing some of these important lectures and a few other serious essays, is a fitting tribute to such a great personality.

On a personal note, I had known my old friend Rishikesh right after he came to Kathmandu upon the completion of his schooling in Darjeeling. We became close friends after joining the Tri Chandra College in 1942. Later on, we both went abroad for further studies. After returning back to Nepal, he became a professor and took to politics, and I joined the Government service and served the nation for nearly half a century in one capacity or another- in civil service, diplomacy and for the most part, in the administration of justice. Rishikesh also served in the fields of education, diplomacy, and finally in the field of human rights. We made very good friends. I feel proud to acknowledge that my friend has been able to leave his decisive intellectual imprint in every sector he worked, and that too with a firm nationalist and human rights synergies.

I, for one, have learnt from life that love is better than hate, peace is better than war and cooperation is better than conflict. Mahatma Gandhi spelt out the moral principles on which civilisations rest as he said, "Evil can be broken only if we respond it with good." Peace is indispensable for the overall progress and prosperity of any nation and as a developing country, Nepal desperately needs to work on peace building efforts to make up for the years lost on conflict and to proceed on the path of development. Similarly, the linkage between peace and human rights should not be lost on anyone, as only with the guaranteed protection of human rights can anyone fulfil her/his duties and responsibilities towards the country without any hindrance. The years of conflict have been detrimental to the people, as their ability to exercise their basic human rights had been severely hampered.

The great freedom fighter and peace activist, Martin Luther King Jr once said, "Peace is not merely a distant goal that we seek, but a means by which we arrive at that goal." The quest for peace is indeed a very difficult and challenging task for a country like ours and much needs to be done in peace building efforts to herald an era of lasting peace in the country. We must discuss, debate and give the polity the opportunity to understand our challenges and make informed decision about our destiny. A decision made after adequate consultation is likely to be a better one, which less imperfectly mirrors the opinions, interests and needs of all concerned, than a decision taken with little or no consultation. It is for this reason that freedom of expression is one of the most fundamental rights that individuals enjoy. It is fundamental to the existence of democracy and the respect of human dignity. It is also one of the most controversial rights, because freedom of expression means the freedom to express one's discontent with the status quo
and the desire to change it. As such, it is one of the most threatened rights, with governments all over the world constantly trying to curtail it.

This book includes the lectures, views and opinions of a number of scholars, academicians, professionals and experts with important views in the fields of human rights, peace and conflict transformation. Dedicated to Late Rishikesh Shaha, all these views try to deal with the complex issues involved in conflict transformation from different vantage points in a very simple manner. There are always unique as well as common aspects to different conflicts. An important feature of the book is that the articles not only provide an analytical overview of the situation of human rights and conflict in Nepal, but also draw upon the experiences and lessons from conflicts around the world. They encompass diverse and critical yet objective views. As such, the book is of immense value towards understanding the intricacies of internal conflict, human rights and peace building with a global perspective. On a more practical plane, these essays try to help the decision-making at all levels by initiating discussion with a wide range of views. The Government is expected to know what the experts feel and think. It should be clarified, however, that the views expressed in all the lectures and articles in the book are solely the views of the respective authors and not that of the National Human Rights Commission.

Finally, I would like to express my sincere appreciation and thanks to the contributing authors of this book, most of whom also interacted with a large number of people in Nepal during the memorial lecture series, with their expertise and insightful analysis of not only the conflict in Nepal, but also conflict transformation and human rights with an international perspective. I would also like to thank Dr Bipin Adhikari, a legal and human rights expert, for kindly taking the initiative to bring out this compilation in the present form, and for his tireless editorial and management works, without which this publication would not have been possible.

Nayan Bahadur Khatri
Chairperson
National Human Rights Commission

December 2003
Foreword

The context of the establishment of national human rights institutions (NHRIs) is a new phenomenon in the world. Triggered by the World Conference on Human Rights in 1993, the number of national human rights institutions is growing around the world. Nepal was able to establish a national human rights institution only in the year 2000 - about eight years after the March 3, 1992 resolution of the United Nations Commission on Human Rights and UN General Assembly Resolution 48/134 of December 1993 outlining the establishment of NHRIs. It is of course time to see how those benchmarks established by the Paris Principles of 1993 - have fared in the context of Nepal’s National Human Rights Commission, which has just entered its fifth year of existence.

I remember what the former United Nations High Commissioner for Human Rights, the late Sergio Vieira De Mello objectively said to the International Coordinating Committee of National Institutions in April 2003: “The concept of a national [human rights] protection system has three main elements. First it must be national – reaching throughout the state, extending its reach to all quarters of society and representing and being responsible to that society. Second, it should protect - which means it should be sufficiently robust to ensure effective remedies to all people at the national level. It requires education, and it requires such mechanisms that concerns, complaints and violations are dealt with in a satisfactory manner. Finally, it is systematic. It will require executive, legislative and judicial strength and support. It will need the positive contribution of a rich and vibrant civil society. And it must have the critical mass and expertise that a national human rights institution can bring.” His opinion gives the crux of what a national institution like the National Human Rights Commission of Nepal should be able to do.

It is important to note that Nepal’s multi-party democracy has become 13 years young. Based on the Constitution of the Kingdom of Nepal, drafted and promulgated in 1990, the new democracy in Nepal had a very good beginning in its formative years. With basic human rights guaranteed to all Nepalese people, the Constitution also ensured constitutional monarchy, multiparty democracy, a prime-ministerial system of governance, periodic elections, adult franchise, an independent judiciary, and the system of the rule of law. It also lifted the ban on political parties as the major actors of politics in the country.

The adoption of a new Constitution led to the establishment of a full-fledged multiparty Parliament and in May 1999 the country’s third national elections were held. The nationwide elections were able to
produce a government accountable to the people along with the establishment of local self-governing units. These governments were free to devise necessary economic, social and political changes that the country needed, in pursuit of a liberal economy and pro-people changes. Considerable attention focused on challenges posed by slow and uneven social and economic development. Active participation of the people in governance started strengthening civil society as well. The presence of large numbers of non-governmental organizations, academic institutions and a free press is evident to all. These contributed greatly to sensitising the political sector and the bureaucracy to important societal issues. All governments since 1991 have been committed to development that is non-discriminatory, participatory and broadly shared in a development process that secures the rights of all Nepalese men, women and children for improved health, education, standard of living and for better governance. A number of initiatives including the enactment of legislation by Parliament – the Local Self-government Act of 1999, which enabled local elected bodies to address development needs, to collaborate with the private sectors on joint ventures and, significantly, to exercise judicial authority, have also been achieved in a more effective manner. An essential aspect of this new development was the need to sensitise elected functionaries in the protection and promotion of human rights of the common people and inculcating a rights-based approach to the development.

For many, however, democracy did not deliver on all fronts of our national expectations. Disillusionment from unrealised expectations and the polarization along political lines of almost all issues, including human rights, had the potential to considerably undermine the undoubted progress that has been made. In addition, participation of women, ethnic and marginalized communities, and the people of remote areas in governance left much room for improvement. The considerable improvement in conditions for human development during the last thirteen years did not mean the elimination of poverty, illiteracy, marginalization and unemployment. They remain major hurdles to the full enjoyment of the rights guaranteed under the Constitution. In fact, Nepal remains poorest of the countries in the region. Poverty, health and literacy indicators all attest to the challenges that His Majesty’s Government of Nepal faces in improving access to economic and social rights. Problems remain with civil and political rights as well. Rising awareness and expectations, and real and perceived denial of opportunities are leading to social tensions and violence in which the common people are inevitably the victims of human rights violations.

In fact, with the third national elections for the House of Representatives in 1999, the period of political instability which had started in Nepal a couple of years ago became further complicated and protracted. The
problem of governance, mismanagement, and inter-party and intra-party disputes, and other behavioural responses to the new found freedoms and liberties started failing the mark. The Communist Party of Nepal (Maoists), which started the "People's War" since 1996 took to more violent offensives in the changed context. The Maoists, whose aim is to establish a communist republic, have been suggesting a round-table conference, an interim government, and election of a Constituent Assembly as necessary to get away from the vices and usher in an improved democratic set up for immediate peace.

The failure of the then Government of Sher Bahadur Deuba to hold elections and his subsequent sacking on 4 October 2002 by King Gyanendra on the charge of incompetence triggered the constitutional crisis, which continues in Nepal even today. The king promised to be a "constructive monarch", calling Prime Minister Deuba incompetent to hold elections within the constitutionally required six months period. The parliamentary parties criticized the king's assumption of power as "regression" and demanded restoration of the dissolved Parliament. To their dismay, for next eighteen months the King had to rule directly by appointing Prime Ministers one after another, although his efforts to stop further deterioration of political chaos were not enough to solve the crisis. The political, economic and social situation of Nepal has deteriorated to the point that international observers have begun to express concern that Nepal could become a “failed state”. Instead of reconvening the dissolved Parliament and forming an all-party government, as the political parties thought it necessary to restart the peace process, the king proposed in mid-April of 2004 to hold elections to the House of Representatives by mid-April 2005.

Although on 2 June 2004 King Gyanendra finally re-appointed the sacked Prime Minister Deuba and took the step to bring back on track the Constitution of the Kingdom of Nepal that was derailed in October 2002, the political crisis in Nepal shows no signs of abating. Prime Minister Deuba is trying to get the support of other parliamentary parties of the dissolved House of Representatives to the extent possible and move ahead with the peace process and the objective of conducting the elections before April next year. But many observers believe that free and fair elections are impossible in Nepal amid the ongoing insurgency. They say free elections for whatever purpose — to elect new representatives to parliament, to choose representatives for a constituent assembly, or to hold a referendum— are not possible unless the conflict between government security forces and the Maoist insurgents is halted by a temporary truce.

A settlement to these political issues is relevant even in the context of building a national institution like ours. In fact, Nepal has become a country with the worst human rights record. Both the Maoists and the
security forces have been continuously involved in human rights violations. The brunt of the violence is borne by the innocent civilians as they form the largest group of people who have been killed in the more than eight years of the conflict. Ordinary people face extreme pressure from both parties to the conflict – they are suspected of being Maoist sympathizers by the security forces of the state while the Maoists suspect them of being government informers. Subsequently, illegal arrests and detentions, killings, abductions, disappearances, torture and rape have become commonplace. The Maoists have targeted people from ordinary walks of life, including teachers, journalists, lawyers and political party cadres. Similarly, the security forces have killed innocent civilians on the suspicion of being Maoists in numerous encounters. Both internal and external displacement is growing and the Maoists are resorting to mass abductions of students and villagers and consequently using them as human shields in encounters with the security forces. Growing number of people have also allegedly disappeared in the detention centres of security forces. As such, human rights violations have included not only the violation of the very basic right to life but with it all other rights that ensue from this basic right.

The Constitution of the Kingdom of Nepal is under stress. The primary mechanism for the protection of human rights at present – the judicial system – has many limitations, some of which are common worldwide. Delays, resource constraints and complexity in most judicial systems tend to impede the prompt and effective disposal of human rights grievances and Nepal is no exception. The number of cases pending in courts has been on the rise and there is a growing concern about delays in providing justice. Though court orders stipulate a specific timeframe for disposal, at times some cases are known to wait for a hearing for more than a decade. In rural areas, disputes are settled through existing customs and practices which are often to the disadvantage of the underprivileged and marginalized. While efforts are underway to decentralize and strengthen the justice delivery system, it is, however, unlikely ever to be an adequate forum for addressing many human rights matters. Due to the increasing offensive and its impact, the Maoists are superseding the normal course of justice system in all territories under their control. The system of civil police supporting the judiciary has virtually collapsed, and the security forces under the unified command are not much helpful to the due process of law.

A national institution, which is expected to work in a situation of conflict like ours, is certainly expected to be serious in fulfilling its objectives and activities. In a way, we can also take it as a unique opportunity to help our motherland in all possible ways including by contributing to human rights sensitive ways to peace process. That means we need to dig deeper and look for creative ways to deal with these issues which affect our own
security and is very much at the core of our activities for promoting and protecting the human rights of all Nepalese people.

As soon as the Commission was established in 2002, the donor agencies and the UNDP in Nepal came with a new method for a coordinated assistance to the Commission. The UNDP was able to create a modest basket fund to kick off a project to address some of its pressing requirements. This is how the UNDP-coordinated Capacity Development Project came into existence. The Project has been crucial to the Commission, which had just started its work. It has played a pivotal role in all areas in which we work. I do not hesitate to acknowledge that the Capacity Development Project has left its imprint in everything outstanding that the Commission has been able to do in recent years. In view of the change in the material situation, and the enforcement of a new Strategic Plan 2004-2008 of the Commission, we have been working with the UNDP to finalize the revision of the Project. I take this opportunity to express my sincere appreciation to the UNDP for the continued support being extended to us.

This book Building Capacity of National Human Rights Institutions: The Case of Nepal is the output of our colleague Dr Bipin Adhikari who worked with us for about two years as the human rights capacity development advisor. It focuses on efforts towards developing the capacity of the National Human Rights Commission as a test case of national human rights institutions (NHRIs) emerging around the world as an important state apparatus to protect and promote human rights. Starting with international guidelines - the Paris Principles and United Nations Handbook, the book discusses the context behind establishing the Commission, its mandate and powers, and attempts towards prevention by promoting human rights through education and information, protecting them through an effective complaints and investigation mechanism, and prevention through review and scrutiny of existing legislation and policy. It deals with several capacity-building works being undertaken at the Commission, and the degree to which the Commission is successful in carrying out its mandate to promote human rights and protect the rights of the citizens. The study looks at how the Commission is acquiring legitimacy and a reputation as a credible and independent institution. There are also passing references on other national institutions in dealing with the kind of problems that we have. There are not necessarily any direct lessons for Nepal from their varied experience, but there are many practical ideas from which we could benefit. These issues are highlighted in the book in a very comprehensive manner.

There is no doubt that the notion of capacity development has already found its place in the path of the development process of the National Human Rights Commission of Nepal. The author has included a number of
important documents that the Commission has produced in recent times with the help of the Capacity Development Project and others on the annexure of the book. They not only show our intensive work spirit but it is also believed to be helpful to many readers in Nepal and abroad, who are interested to know how the Commission is developing its capacity in the resolution of ongoing human rights issues. I feel that some of the documents like the *Minimum Immediate Steps for Human Rights Protection that the Commission submitted to His Majesty's Government* in March 2004 can be an example for many other national institutions working amidst conflict. The annexure gives the advantage to the readers to read the full text of some important documents that the author has mentioned and narrated as his research unfolds.

Dr. Adhikari is admirably clear and makes many valuable observations as well as providing much information which has not been readily available before. I am sure it will be an extremely useful contribution to the debate on building national human rights institutions and one hopes to their expansion and development. It provides evaluation of effectiveness rather than simply describing formal structures and procedures. Written by an insider, although in his very personal capacity, the book is a welcome addition to the study of national institutions. But it also needs to be emphasized here that the opinions expressed in this book are solely the opinions of the author as an expert and not necessarily of the National Human Rights Commission, or the United Nations Development Program in Nepal.

I am grateful to Dr Adhikari for this work, and am really glad that he has been able to publish such an important document that in essence, provides an in-depth analysis of our activities in these four years, along with Dr. Adhikari’s own experience as an advisor to the Commission in the last two years. I hope that the conclusions and suggestions made by Dr. Adhikari will be illuminating to all who are engaged in building this Commission as a strong national institution.

Nayan B. Khatri
Chairperson
National Human Rights Commission of Nepal
11 July 2004
Acknowledgement


In December last year, the national human rights institutions around the world celebrated the 10th Anniversary of the Paris Principles. One could say the endorsement by the UN General Assembly marked the moment when members of the United Nations officially recognized the crucial role played by national institutions in making human rights a reality in the daily lives of a nation’s people. It also allowed national institutions to have a voice in international forums like the United Nations Commission on Human Rights, and we all in the human rights field have reasons to be happy about it.

The National Human Rights Commission of Nepal has completed four year of its existence. It is now more matured than what it was two years ago. It is not only trying to develop according to these international standards, but also making efforts to get recognized by His Majesty’s Government and its institutions, and the civil society at large. It is clear that it still has to work hard in the days ahead to achieve what the Paris Principles really enable it to stand for. Again, being in conformity with the Paris Principles does not of itself guarantee the effectiveness of a national institution. The mission, vision and goals of an organization have no meaning if there is not enough commitment to materialize them. This commitment has to be built through a process of institutionalisation of the organization, which necessitates building a sustainable capacity to stand by Paris Principles, and guarantee a robust institution. International experience suggests that the most effective national institutions are those with a strong commitment to making respect for human rights a reality and are willing to stand firm in the face of resistance.

This book tries to give a serious look on a variety of the issues that the National Human Rights Commission is working on. It also focuses at how the national institution of Nepal is doing its work and developing new tools for improving its impact. The general theme is to discuss issues involving capacity building, but attempts are made to highlight also on human rights issues that the Commission is involved with.
This book emerged from about three months of nighttime research and creative thinking to which many people have contributed directly and indirectly. My deep recognition goes to those who have contributed the most to this effort. In particular I would like to thank my colleague, Niraj Dawadi, who has worked with me on all matters included herein with full vigour. I also thank Liz Franzmann for her research assistance at the early stage of this research. I am also benefited from assistance of Monica Rijal, Madhav Prasad Gautam, Shankar Nath Adhikari, and Tanya Jakimow. My interactions with Kedar Prasad Poudyal, Vickram Chhetri and Ivan Munk Nielsen on many of the issues that have been discussed in this book were quite helpful. I have received considerable assistance from Dr. Gauri Shankar Lal Das, Mr. Sushil Pyakurel and most of the officials at the Commission in writing this book and would like to thank them for the time they have given to share their ideas and to comment on my earlier drafts.

I also take this opportunity to thank my management colleagues Anil Bajracharya, Soni Shrestha, Pramila Neupane, Dwarika Shrestha, Sarki Man Tamang, Buddhi Raj Neupane and Ram Narayan Chaudhary. They have as usual been very supportive to any cause of the National Human Rights Commission, and I really feel proud of being one of them. Subodh Pokharel and Sulav Regmi also kindly helped me design the cover page. I have a sincere appreciation for their support as well.

Finally, I am grateful to Rt. Hon. Nayan Bahadur Khatri, Chairperson National Human Rights Commission, for kindly giving his forewords to this book. Mr. Khatri has been an inspiration to all around him. Also regarded as the father of constitutional remedies and the writ jurisdiction in Nepal, it was a great experience to have an opportunity to work with Mr. Khatri for about two years. I really admire him for the leadership that he has been able to provide to the Commission. His opinion has been very valuable to me to shape up the book that has been presented before you. The views expressed in this book however is that of the author and not necessarily of the National Human Rights Commission, its staff or agencies helping it academically, morally or financially.

I do hope my friends will be generous in offering their constructive criticism on this book so as to point out its shortcomings and gaps.

Bipin Adhikari
July 2004
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# Chapter V

## Review of Institution, Activities and Capacity Building Efforts

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Chapter I
Context of Capacity Building and Institutionalisation

The National Human Rights Commission (NHRC) of Nepal is one of the most vibrant national human rights institutions in the Asia-Pacific region. Established in June 2000 under the Human Rights Commission Act 1997, the Commission has completed four years of its operation. Through the years, it has become a prominent actor in the arena of human rights in Nepal.

As a national human rights institution of Nepal, its responsibilities include protecting and promoting human rights; reporting to His Majesty's Government on human rights issues; ensuring harmonisation of national laws with international human rights standards; contributing to state reports to the United Nations treaty bodies and committees; cooperating with international human rights institutions, and assisting in human rights education. The crucial measure of the effectiveness of a national human rights institution is nevertheless its capacity to respond to the needs of those in society who are most at risk of suffering violations of their rights. This in turn depends on the capacity that has been developed to help the Commission deliver.

In a generic sense, capacity means the attainment of skills and the capabilities to use them. It is the process by which individuals, groups, organisations, institutions and societies increase their abilities to perform core functions, solve problems, and define and achieve objectives, and understanding and dealing with their development needs in a broad context and in a sustainable manner. Capacity is the ability to perform functions, solve problems, and set and achieve objectives. It has traditionally been conceived in two dimensions: human resources and organisational functions. It involves not only individual and institutional levels, but also capacity in the society as a whole. As such, the first level is that of the individual. The second level, or the institutional level merits an interpretation beyond the organisational aspect. Institutional capacity involves laws, procedures, systems and customs. Policy development is also critical to capacity development. The third dimension, the societal, encompasses the facilitatory process which lies at the heart of human

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1 In this book, the terms "capacity development" and "capacity building" are used interchangeably to mean a long term process that covers many crucial stages, including building capacities and ensuring national ownership and sustainability.
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development: the opening and widening of opportunities that enable people to use and expand their capacities to the fullest. Resources are important for capacity development, but they are not sufficient. How they are applied and managed, the commitment of leaders, the ability of the organisational structures to deliver benefits, and the wider policy and institutional environment of facilitation and enablement are all of primordial importance for the achievement or non-achievement of the goals. These are critical aspects of capacity development. 

After an organization is founded and it has found a niche for itself, it has to gradually start establishing itself as an institution. There are at least three common elements embodied in the concept of institution. These are (a) prescription of norms of behaviour; (b) their observance and continuity over relatively long period of time and are independent of individuals, and (c) they are capable to impact upon small groups as well as an entire society. The main characteristic of an institution is its normative character enshrined and reflected in its values and role in making impact on a smaller or larger part of the society. The transformation of an organisation into an institution takes place when reliance on external rules and procedures gives way to internalised norms of behaviour. The external demands, so to say, are replaced by internal commands. The desirable behaviour is then said to be institutionalised.

An institution is supposed to have its vision and mission. This is necessary to ensure that the creation of a rationalized service is complemented by changes in management philosophy and practice, as well as in organizational structure and culture, designed to enhance the performance, responsiveness and accountability, thereby enabling the organization to build for itself a reputation for excellence among the clients and communities they serve. There is a tendency for transformation strategies to focus on the more visible aspects of change (such as structures, organization, and systems), whilst the equally important, though less visible aspects (relating for example to employee morale, motivation, fears, aspirations and values) are neglected.

An institution is strengthened by properly addressing issues relating to devolution and decentralization of managerial responsibility and accountability. The powers to lead and direct processes of change in a creative and visionary way are generally constrained by the rule-bound and procedure-laden culture inherited from the past. The move towards the

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devolution and decentralization of organizational responsibility will be complemented by the creation of more open, flexible and participative management structures at all levels throughout the public service. Although clear lines of responsibility and accountability will still be required, these structures will concentrate less on application of rules and more on the creative use of consultation and teamwork. These structural changes will need to be accompanied by a major shift in organizational culture, from a rule-culture to one which is focused more on the achievement of tasks and the meeting of needs.

At the heart of the performance of the organisation lie the issues concerning the efficiency, competence, motivation, and morale. The effective mobilization, development and utilization of human resources will therefore be critical for an institution, as well as for the success of the transformation process. The output-oriented approach becomes very important to improve the capacity of the organization to meet the needs of the stakeholders by continually reorienting the organizational structure, behaviour and culture to this purpose. To meet its vision and mission, and to respond effectively to the many challenges with which it is faced, the institution must increasingly become a learning organization. This means more than continually investing in the knowledge, skills and competencies of its entire staff. It means essentially that the organization and its staff must fully exploit the opportunities for growth, development and change in the fullest sense of the word, particularly by constantly re-appraising existing work practices and behaviour, and the values and assumptions that underpin it, by building upon those that are useful and discarding those that are not; by being prepared to experiment with new ideas and practices, and by learning from mistakes rather than attempting to conceal them.

An institution will need to be skilled in handling the complex processes of change taking place around it, and will require continuous refreshing and updating in such skills. One of the dimensions of change, arising from the successful implementation of affirmative action programmes concerns the question of diversity. Such diversity could and should become a major source of strength for the service. This will need to be managed effectively, to maximize the benefits and minimize the problems.

If the process of administrative transformation is to lead to much more effective and accountable systems of policymaking, implementation and evaluation, an accurate and accessible information system will be needed. This will require the redesigning and upgrading of the existing information system, particularly a computerized system, to increase the accessibility and accuracy of information, as well as to improve communication
between and within departments, and between different agencies and levels of Government. Improved financial information system will also be required, to facilitate effective programme budgeting, tighter financial accountability, and quicker auditing.

There is no commonly accepted definition of the term ‘institutionalisation.’ The question arises as to what institutionalisation is and how it is identified. It is the process of building the internal capacity of an organization as a total system involving the development of values and norms relevant to achieving its goals. This involves the process of transforming a development organization into an integrated and organic part of the given community in a way that will help the organization to play a proactive role in promoting new values and also become a sustainable agent of change in the community. This transformation will take time. Institutions have histories, of which they are the products. It is impossible to understand an institution adequately without an understanding of the historical process in which it was produced. So this process of institutionalisation must be looked into in the context of history.

Building capacity in terms of human resources and organisational development is the prerequisite for the purpose of institutionalisation. Capacity helps the process of institutionalisation, or the organisations and procedures making them stable, valued, having recurring patterns of behaviour and maintaining their adaptability, complexity, autonomy and coherence. They enable predictable and patterned interactions, which are stable over time and constrain individual behaviour, and which are associated with shared values and meaning for those working in the institution.

Whether a particular organization is being institutionalised or not can be gauged on the basis of certain variables. Some of these variables are as follows:

- If the goals of an organization are perceived to be important and challenging for the society, and further, if these goals are shared among the members of the organization, the process of institutionalisation will be smooth;

- If enough trust is not placed in people working in an organization, and they are not given enough autonomy to work, institution building will suffer.
• The matrix form of organization is most suitable for institution building.

• An institution, which builds linkages with its major stakeholders (client systems) has more chances of a healthy growth

• Mechanisms for establishing a balance between the autonomy of individual members and their collaboration for achieving common goals help in the institutionalisation.

• The process of self-renewal throughout the life of the institution ensures institution building.

• The leader who respects the roles of members of the organization and provides autonomy to them to function contributes to an effective institution-building process.

• A leader who is prepared to change and learn contributes a great deal to the institution building processes.

• The most critical test of institutionalisation is the extent to which a leader is able to dispossess him/herself from the organization, which he has been able to transform into an institution.

The concept of institutionalisation has same implications whether the organization in question is a human rights organization or a developmental, political or for that matter, a business organization. As far as the issue of the National Human Rights Commission is concerned, however, institutionalisation may mean that the organization continues to exist; it is adequately funded; it has a stable funding base; the decision makers recognize the value of the organization; it has broad judicial support; it is widely accepted part of the system throughout the state; it has sufficient resources to provide its services to all who need them; it continues to function effectively after the initial charismatic leader has moved on; it is widely accepted as a credible method of protecting and promoting human rights; it has used time standards that are appropriate for a national institution; it is closely linked to the rest of the human rights system; it is the way business is done in all cases involving people who need the services and do not pose risks or violence, and it is based on the philosophy and basic concepts underlying the national human rights institution incorporated into the state system, regardless of whether what we now call “national institution” receives long-term funding.
Many people, particularly those actively engaged in the day-to-day operations of national institutions that are supported to a significant extent by grant funding, may define institutionalisation as the development of long-term stable funding to support all operations of the existing national institution. Others may define institutionalisation more broadly, focusing less on the availability of funding and more on the incorporation of national institution concepts, strategies and techniques into the ongoing operations. These two lines of thought are not contradictory.

An institutionalised national institution enjoys support in the social space between the private realm of the individual and the public realm of the state. It has valuable presence and acceptability in the network of free associations and organizations which fulfil a mediating function within the social structure. It has social capital - factors such as trust and dependability, which contribute to cohesiveness within a social system and which are viewed as resources. It is part of the maintenance trend in a social system.

Institution building is the creation of governance capacities. It entails the dismantling and reformation of old organizations and institutions – legal, administrative, economic as well as social – the improvement of efficiency and effectiveness of existing institutions, the restoration of destroyed institutions and the enhancement of authorities’ professionalism.

In this sense, institutionalisation is the thorough integration of innovation into the larger social system evidenced by established supportive norms and behaviours.

This book is an exploration into the efforts of building the capacity of Nepal’s National Human Rights Commission (hereafter ‘NHRC’ or ‘the Commission’), and the effectiveness that it has achieved. It deals with both the problems of institutionalisation, its challenges ahead and how the efforts towards institutionalisation are being contributed by capacity development initiatives.

The analysis will be undertaken by, firstly, working under Chapter I and II on the international guidelines- the Paris Principles relating to the status of national human rights institutions and its relation with the concept of capacity building and institutionalisation, which is the main theme of the book. Secondly, under Chapter III, the analysis concentrates on whether the Commission has achieved baseline international standard - that is, sufficient levels of independence and an appropriate mandate. The issue of independence will be approached using the ‘pillars’ of independence
detailed in Chapter II. For the sake of brevity, these four issues will be addressed under three separate headings: legal and operational factors, appointments and pluralism of members, and financial autonomy. Chapter IV is devoted to evaluating a sample of the Commission’s activities in order to establish its effectiveness as a national human rights institution.

Building on earlier chapters, Chapter V deals with major institutional and capacity development issues involving the Commission as an agent of peace, problems of human rights monitoring; action and determination of compensation; complaints management system; regionalisation plan and accessibility issues and domestic visiting mechanism. This Chapter also reviews the Commission’s dealings with the Communist Party of Nepal (Maoist), working with the Royal Nepal Army; economic, social and cultural rights; the Office of the National Rapporteur on Trafficking in Women and Children; human rights treaty compliance structures; monitoring National Human Rights Action Plan; networking with non-Governmental organisations; issues involving ethnicity and discriminatory social relations; media strategy; promotional works; administrative and financial issues; reform of the Human Rights Commission Act; relationship with other national Commissions; internal issues and team building efforts including creation of the Human Rights Promotion Centre; networking with parliamentary institutions; the Commission’s relations with the judiciary and its relationship with the United Nations Office of the High Commissioner for Human Rights (OHCHR). They are not only informative, but also analyse where the National Human Rights Commission is in terms of its institutionalisation efforts, and where necessary, how the capacity is being developed as per the pressing requirements of the Commission.

Finally, in Chapter VI, a number of suggestions for improving the Commission’s work are detailed in the recommendations contained in the last part of this analysis.
Chapter II


Capacity development is a must for the institutionalisation of a national human rights institution (NHRI). The context of institutionalisation must however be understood on the basis of the Paris Principles - which have become the benchmark against which national human rights institutions are measured. There is recognition up to the highest levels within the United Nations of the value of the Paris Principles in the construct of human rights systems for the promotion and protection of human rights.

National human rights commissions emerged as a priority in the global human rights field after the United Nations began to actively promote the concept. The concept itself started to evolve after 1946. The issue of NHRI has gradually ascended in the United Nations hierarchy of meaning from the Commission on Human Rights up to the General Assembly. When both covenants were opened for ratification in 1966, the General Assembly declared that NHRI are considered to "perform certain functions pertaining to the observance of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights." 4

In drafting common standards for NHRI, as they are embodied in the Paris Principles today, the concern of member states that a standard concept of a NHRI amounted to interference in "internal affairs" had to be overcome. Doubts were eventually dispelled by reserving "the right of each state to choose the framework that is best suited to its particular needs at the national level." 5


3Principles relating to the status of national institutions for the promotion and protection of human rights (The Paris Principles), endorsed by the Commission on Human Rights in resolution 1992/54 and the General Assembly in resolution 48/134 of 20 December 1993 (See Appendix to this report)
The Paris Principles were subsequently adopted by the UN General Assembly in 1993. The adoption of this U.N. General Assembly Resolution 48/134 represents a decisive breakthrough for the development of common standards for NHRIs despite the earlier controversy about them. Now they constitute the minimum standards for establishing and evaluating national human rights institutions around the world. Ever since, NHRIs have been a regular item on the agenda of the Human Rights Commission and the UN General Assembly. Established in 1993, the "International Coordinating Committee of National Institutions for the promotion and protection of human rights" (ICC) today constitutes the loose association of NHRIs at the international level, which is independent of the UN, but which cooperates in liaison with the UN High Commissioner for Human Rights in Geneva. The ICC has started an accreditation process in 2000 by which national bodies can become recognised as national human rights institutions. Compliance with the Paris Principles is used as the basis of determining accreditation. The accreditation does not entail any legal implications. However, ICC-recognition has some "declaratory significance" as the international community is informed as to whether a country maintains an independent, accredited NHRI or not. By early 2002, forty-two institutions had been formally accredited.\(^6\) There are already various forms of cooperation between NHRIs in Europe, Africa, America, and Asia-Pacific and their relationship to regional human rights regimes.

By their legal nature, the Paris Principles are an international non-binding standard. The legal significance of a standard is that it can, but does not have to be applied. Nevertheless standards always function as a normative measure to guide and assess state behaviour. In this context, the U.N. General Assembly declared that the Paris Principles are to be seen as a part of the "development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards."\(^7\) The Paris Principles also imply that their fulfilment needs to be optimised over time.

The Principles set out various rules with respect to competence, mandate, responsibilities, powers, legal foundation, legal shape, composition and selection of members. They elaborate five principles such as independence of the national institution (substantial, personal, financial, and legal independence); pluralistic composition; cooperation; accessibility, and transparency. These principles are not only addressed to the founding state

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\(^7\) See U. N. Doc. A/RES/34/148 of 20 December 1993, preamble
but also to NHRI s themselves, since it is partly within their institutional capacity to ensure their continuous realisation. The aim of the Paris Principles is to promote autonomy from the Government, particularly the executive branch. The Paris Principles emphasize the importance of a broad mandate, a legislative founding statute or constitutional text, an independent appointments procedure, plurality of members, and adequate funding.\textsuperscript{8} Human rights activists view the principles as embodying ‘the four pillars of independence’ fundamental to the credibility of a national human rights institution. These are: independence through legal and operational autonomy; financial autonomy; appointment and dismissal procedures, and pluralism of composition.\textsuperscript{5} The International Council for Human Rights Policy has separated these issues in four parts:

- Competence and responsibilities: It is suggested that a national human rights institution (NHRI) be given as broad a mandate as possible "which shall be clearly set forth in a constitutional or legislative text." Its responsibilities shall include reporting to the Government on human rights matters; ensuring harmonization of national laws with international human rights standards; encouraging ratification of international human rights instruments; contributing to states' reports to UN treaty bodies and committees; cooperating with international, regional and other national human rights institutions; assisting in human rights education; publicizing and promoting human rights.

- Composition and independence: Independence is guaranteed through three means. The first is composition, which ensures "the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights." The second is a level of funding and infrastructure that allows it to be "independent of the Government and not be subject to financial control which might affect its independence." The third is that the mandate of the institution be established by law.

- Methods of Operation: Provisions here include that an NHRI shall "freely consider any questions falling within its competence" whoever refers them, including "any petitioner." This section also makes specific reference to maintaining "consultation with the other bodies, whether under their jurisdiction or otherwise" responsible for human rights issues. It also stresses the "fundamental role played by the non-Governmental

\textsuperscript{8} The full text of the Paris Principles is reproduced in Appendix-2.
organizations (NGOs) in expanding the work of the national institutions" and encourages NHRIs to develop relations with such groups.

- Finally, the Principles state that an NHRI may be authorized to hear and consider complaints, and provide guidelines for such procedures, including an emphasis on "amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions." ¹⁰

In 1995, the UN Centre for Human Rights developed a comprehensive handbook containing detailed guidelines on establishing and strengthening national institutions. In addition to the handbook, the centre provides practical assistance to States setting up such organizations. This added further legitimacy to the concept of national human rights institutions around the world.¹¹

An independent national human rights institution is an integral part of a national protection system. Such an institution is the basis upon which one can build to translate international human rights standards at the country level. The Paris Principles inevitably were the starting point for most discussion of national human rights institutions in the 1990s. After a decade of the Paris Principles, there are many in the human rights movement around the world, who think that the Paris Principles are the vital reference point or the lowest common denominator, not benchmarks, for national human rights institutions. In other words, the realization is that they only constitute the minimum guidelines upon which national human rights institutions should operate.

In 2003 the international community of NHRIs celebrated the 10th anniversary of the adoption of the Paris Principles. Today, the community of NHRIs is increasing with more countries seeking to join the NHRI community as per the values enunciated by the Paris Principles. After its establishment in 2000, the NHRC, Nepal became the 8th member of the Asia-Pacific Forum of National Human Rights Institutions. Today the Forum has fourteen members and more NHRIs are applying to join the Forum which in effect further validates their standing as a national human rights institution in line with the Paris Principles. No doubt, Nepal is one of the active members of the Forum. A study on the National Human Rights Commission as a test case of a national human rights institution certainly contributes to the NHRI movement around the world.

Chapter - III

Establishing Nepal’s National Human Rights Commission

The establishment of the National Human Rights Commission of Nepal must be viewed in line with the unfolding political events in Nepal. This includes Nepal’s struggle for democracy, poor democratic performance, dismal governance record, and the geopolitical situation of this strategic country in the South Asia.

Political Events

Nepal is an ancient monarchical country, which was unified between 1768 and 1790. The monarchy came under peril after Jung Bahadur Rana became the Prime Minister of Nepal in 1846 after a violent overthrow of the existing political elite governing the country alongside the King. He also established a hereditary prime-ministerial system in Nepal. This system minimized the role of the King in governance, and established the autocratic system based on the Rana family.

The first written Constitution of Nepal was promulgated in 1948 under the pressure of the democratic opposition movement of the educated elite and then suspended in the wake of opposition from within the Ranas. Prime Minister Padma Shumsher Rana, the second last hereditary Prime Minister of Nepal, resigned in this background. In 1955, King Tribhuvan who had joined the revolution heralded by the pro-democratic Nepali Congress Party to overthrow the Rana autocracy and establish a democratic form of Government, died and was succeeded by King Mahendra. The Constitution of the Kingdom of Nepal was promulgated in 1959 leading to first general elections in Nepal. The centrist Nepali Congress Party won absolute majority. In 1960, the Nepali Congress leader B. P. Koirala headed first popularly elected Government. However, his policies were opposed by King Mahendra. Due to this reason, King Mahendra dismissed the Prime Minister, banned all political parties and took over direct control of the Government. King Mahendra died in 1972. His eldest son King Birendra succeeded him.

King Birendra, under pressure from a pro-democracy movement launched by Nepali Congress and left-wing groups, lifted the 30-year-old ban on political parties and ushered in constitutional monarchy with the promulgation of the new Constitution of the Kingdom of Nepal in 1990. In
May 1991, Nepali Congress's Girija Prasad Koirala took office as the first popularly elected prime minister in 30 years. He quit after defeat in a parliamentary vote triggered by differences in his party in July 1994, starting a long phase of political instability marked by the frequent collapse of weak coalitions.

Coinciding with this international movement towards human rights ‘institution building’, the political climate in Nepal was significantly altered by the re-emergence of parliamentary democracy in 1990. With the promulgation of the Constitution of the Kingdom of Nepal, and the structural foundations of constitutional monarchy, adult franchise, multiparty system, basic human rights in the form of fundamental rights, independent judiciary, and gradual openness in ideas and institutions, the liberal democratic environment started picking up in Nepal. The banned political parties, the youth, human rights groups and the civic society, who were pretty much engaged in the movement against absolute monarchy and the 'party-less' Panchayat system of governance, had an open environment and liberal political order. They included a democratic political system, withdrawal of prohibitions on opposition political parties, the release of prisoners of conscience, and recognition of the right to dissent or freedom of speech.

While the political system in Nepal was more open than ever in the past, and the economic, social and cultural impression of the nation was changing, the politics on the other hand gave the impression of lacking national commitment, and more than that, the visionary leadership required in the moment. In February 1996, amidst the same environment, the Communist Party of Nepal (Maoist) launched an armed insurgency aimed at replacing the constitutional monarchy with a one-party communist republic. They picked up several outstanding issues that the successive Governments in Nepal were not able to address, and organized their movement on the strength of it. While many issues on the Maoist movement were still unanswered, in January 1999, King Birendra dissolved Parliament on the recommendation of the Prime Minister in power. There was heavy security for elections in May 1999 elections because of the Maoist unrest.

In June 2001, King Birendra, Queen Aishwarya and other royal family members were killed in shooting rampage, allegedly by Crown Prince Dipendra, who then, as the story goes, shot himself. In June 4, Crown Prince Dipendra, who had been crowned the King while in coma, died and this lead to the crowning of his uncle Prince Gyanendra as the next king of Nepal. Meanwhile, Maoist rebels stepped up their violent activities. Sher
Bahadur Deuba became the Prime Minister, heading the 11th Government in as many years, after Girija Prasad Koirala resigned over the ongoing violence. In 23 July, Prime Minister Deuba announced peace with rebels, and truce began. On 21 November the Maoist party said peace talks had failed and the truce was no longer justified.

The current political crisis dates back to October 2002, when King Gyanendra sacked the then Prime Minister Sher Bahadur Deuba for incompetence. Public disapproval of the king's move, perceived as unconstitutional attempt towards power-grabbing, had grown steadily until violent street protests forced the king in May 2004 to dismiss his second hand-picked caretaker prime minister in two years. In a reversal, he then reinstalled Mr Deuba, instructing him to form an all-party Government, begin peace talks with the Maoists and schedule elections within a year. In mid-June, the King also agreed to annul the Council of Ministers (Transaction of Business) Rules, which the King was said to have modified forcing his hand picked Prime Minister Lokendra Bahadur Chand to accede the authority to the King last year. The modified Rules, not amenable to court jurisdiction under Article 41 of the Constitution, were said to have betrayed the constitutional spirit of the prime ministerial system, and modified the basis on which the Prime Minister, the leader of the cabinet system, could control his colleagues. This enabled four of the five major parties to join the move of Prime Minister Deuba to form an all-party Government to find peace in the country. At present, the success of any talks is likely to depend on the key Maoist demand for a constituent assembly to write a new constitution. Mr Deuba has so far rejected calls for a new constitution, but support for such a move seems to be increasingly widespread. It is unclear, though, whether the Maoists truly seek a negotiated peace or will accept nothing less than a total communist revolution.

Earlier, the Maoists had launched coordinated attacks on army and police posts on 23 November 2001, ending truce with bloody violence which killed at least 45 people. King Gyanendra upon ascending to power had declared a state of emergency three days later and the Government had declared the Maoists rebels as a "terrorist organisation". In October 2002, the Government said that the six-year-old Maoist rebellion had killed at least 7,073 people, mostly rebels. In Mar 2004, the security forces killed more than 200 Maoists, with many civilians by mistake, in a 12-hour battle at Beni Bazar of the Western District of Myagdi, in what would be the bloodiest single clash since the revolt began in 1996. By this time, the numbers of those who were killed by the Maoists and the security forces had crossed 10,000. A big portion of the casualties are said to be civilians.
A New Environment for Human Rights Defenders

The promulgation of the new Constitution in 1990 following a mass movement gave a new environment to the human rights defenders in Nepal. With the newfound freedom, Nepalese human rights activists and organizations were able to voice their opinions more freely for the creation of a national human rights institution, which was not the immediate concern of the agitating masses in the movement for the restoration of democracy in 1990. The human rights advocates in the country were of the feeling that a national human rights commission could be a driving force for change. This local pressure was supported by the international human rights community. The international community had already been able to move on with the standards of Paris Principles by the nineties in various parts of the world for the establishment of national human rights institutions.

Although the successive parliamentary Governments which were elected after 1991 were all democratic, there remained confusion whether Nepal needed a national human rights commission at all. The Paris Principles were largely an unknown thing in this part of the world. It was the human rights activists and the local press that brought the news of the developments in the human rights area to the elite in Nepal. The bureaucrats at the Ministry of Law and Justice and many important members of the judiciary and the Office of the Attorney General who had the opportunity to know it, although not sufficiently, thought that the new Constitution had guaranteed all basic rights of the people, and the independent Supreme Court and the rest of the judiciary was fairly capable to guarantee implementation of these rights in the changed context. The elected House of Representatives and a National Assembly as the upper house of Parliament was also cited as an effective shield against the violation of human rights en masse. The modified Westminster model of parliamentary system was considered as a political guarantee for the effective enforcement of human rights. The fact that the United Kingdom also did not conceive of such an institution also served for many as a basis for this connivance. These arguments in no way ruled out the idea that human rights must be protected in all possible ways, but were not clear whether to have a human rights Commission at all, or what its terms of reference and proper parameters should be. In this background, His Majesty's Government did not consider it a priority issue.
In fact, the framers of the Constitution provided for a Human Rights Committee at the House of Representatives, (the lower house of the Parliament), to take responsibility for human rights related matters under the democratic set up. The Rules of the House of Representatives 1991 originally established necessary powers functions and duties for each specialised committee. In particular, a Committee was empowered -

- To evaluate the policy and programmes, resource mobilisation, administration and similar activities of the Ministry, Department and entities under the Government to comment thereupon and submit the report together with recommendation to the House;

- To check the estimates of revenue and expenditures of the Ministry, Department and entities under the Government and to report to the House, together with its opinion, on the methods of preparing the annual budget, on the alternative approaches which could be adopted in respect of the policies inherent in the annual budget and adopted in respect of the policies inherent in the annual budget, and how much austerity could be achieved on the amounts included in the annual budget;

- To assess the steps taken by the Government to implement the assurances given from time to time in the House by the members of the Council of Ministers on behalf of the Government;

- While preparing reports, to exchange views with the representatives of the Ministry and Department concerned and, if necessary, with the experts of the related subjects, and

- To perform other functions assigned by the House.

Although the Human Rights Committee, in the House of Representatives has considerable importance, until recently it has underused its power reducing its significance. In addition, the need for a separate Commission was apparent in order to fulfil functions not performed by the Committee (e.g. advice to individuals and guidance to public bodies) and some which are complementary (monitoring and inquiry). The vast range of work that is require to ensure the safekeeping of human rights for all citizens justified a separate Commission, The two bodies were expected to work in harmony with one another, for instance, with a Commission playing only a minor role in scrutinizing proposed legislation if the Committee gave a

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12 The House of Representative Rules was replaced by new Rules in 1998.
significant focus to that area of its work, thereby conserving their resources.\textsuperscript{13}

In addition, many people including several senior lawyers in the country were of the opinion that the independent Supreme Court of Nepal was strong enough to exercise powers relating to justice in accordance with the provisions of the Constitution, which guarantee basic human rights to all, and the laws and recognized principles. To them, in the scheme of separation of powers, and the constitutional functionaries created to sustain constitutionalism, a new human rights institution had no space in the new constitutional political system.

Except for the activists, there was no realization that the constitutional legal system of Nepal at that time had no entity to provide advice and guidance for those who wish to assert their rights; institute or support individual or public interest cases based upon well-researched, well founded evidence and arguments; conduct inquiries into particular issues or legal areas; monitor the operation of human rights laws; scrutinize new legislation, and ensure the conformity of the national human rights laws and procedures with the international human rights conventions applicable to Nepal. This attitude of the Government of the day led the human rights activists in the Parliament to mobilize the channel for moving a private bill at the National Assembly – the upper house of Parliament. The argument was somewhat similar to what a Labour peer Baroness Amos, former chief executive of the UK Equal Opportunity Commission said in the House of Lords debate:

\begin{quote}
We currently lack any systematic monitoring, enforcement or promotion of human rights in the United Kingdom. We have bodies such as the EOC [Equal Opportunity Commission] and the CRE [Commission for Racial Equality] which have some responsibility for the protection of certain human rights, but their coverage is partial. We need a body which will raise public awareness, promote good practice, scrutinize legislation, monitor policy developments and their impact, provide independent advice to Parliament and advise those who feel that their rights have been infringed. I am particularly keen to see the promotion of an inclusive human rights culture which builds on the diversity of British society. That would be a key role for any human rights body to play.\textsuperscript{14}
\end{quote}

\textsuperscript{13} See Surya PS Dhungel, Bipin Adhikari, BP Bhandari & Chris Murgatroyd, \textit{Commentary on the Nepalese Constitution} (Kathmandu: DeLF, 1998) at 372-374

Human Rights Treaty Regime

National human rights institutions are often established when a Government finds it is under pressure - especially internationally - over its human rights record. Nepal is signatory to a range of international human rights standards which offer valuable guidance to the Government on international conventions such as the International Covenant on the Civil and Political Rights, UN Convention on the Rights of the Child and the Convention on the Torture. It needs to be noted that His Majesty's Government ratified a number of new human rights treaties to show its commitment in this area after the promulgation of the new Constitution in 1990. With this the human rights record of Nepal, especially on civil and political rights, improved at once.

However, the slow progress in actualising international human rights treaty commitments has been notable. Although the UN Convention on the Rights of the Child was ratified by Nepal in 1990, its implementation has been weak. This Convention differs from earlier ones in the prominence which it gives to rights within the private sphere of family life, and the emphasis placed on prioritising the best interests of the child. Provisions include a range of civil and social rights including the child's right to have his or her views taken into account and respected, a right to protection from abuse, to social security and to freedom from economic exploitation. Periodic reports on each of the countries which have ratified the Convention are considered by an expert Committee every five years. The Committee on the Rights of the Child encourages alternative reports to be submitted by non-Governmental organizations and a comprehensive report on the situation in the country by the Government. Although this process was undertaken, the Government of the day showed little inclination to address the problems which the Committee identified, and the findings of the treaty body were never discussed in Parliament.

A further example is found in the ratification but non-implementation of the International covenant on Economic, Social and Cultural Rights (ICESCR). This unique convention focuses entirely on economic, social and cultural rights as an aspiration for policy rather than as enforceable rights. The latter requires the Governments to pursue by all appropriate means the policy aims in the convention, such as appropriate facilities that shall be provided for vocational training and their availability of social and medical assistance for those without adequate resources. However, none of the issues were taken up by the National Planning Commission of Nepal as
a matter of their obligation, or by the successive finance ministers as a binding statement of law.

In principle, in Nepal, treaty obligations binding in international law also form part of the country's domestic law. As such, the provisions of these Conventions are directly enforceable in our domestic courts. In other words, specific legislations are not necessary to give effect to these treaties in domestic law. However, in practice, the provisions within these Conventions are usually not enforceable in the country without enabling legislation. Treaties guarantees need sanction in domestic law, without which the power of sentencing of the local courts will remain affected. As such, their enforcement rely on public awareness and pressure to ensure compliance. Most of the international human rights standards binding on Nepal have not been incorporated into domestic law and can only be enforced, if at all, through the weak international supervisory procedure. Protection under them remains patchy, not least for certain vulnerable groups such as children and the elderly. Even within the relevant parts of the public sectors, few are aware of these instruments and the commitment the country has made to respect the standards they set. As such, their enforcement relies on ill informed public awareness and pressure to ensure compliance.

Methods for international review and monitoring are limited in what they can achieve and operate at a political and diplomatic level not judicially. Such systems can appear remote and inaccessible to all but experienced international lobbyists, NGO lawyers or tenacious citizens. The system of monitoring by expert committees on the basis of periodic reports yields an insufficient sanction to persuade the Government and public authorities to scrutinize their policies, practices and proposals in order to ensure that these comply with the Conventions, which have the status of binding international law. Consequently, the requirements of these Conventions, and many others which are not mentioned here are not generally known or widely acknowledged either in Government or wider society.

**Moves towards a Culture of Human Rights**

A national human rights institution is needed not only to protect the rights of people which are infringed but also to promote a culture in which such infringements are far less likely to occur. There are significant gaps in the protection provided by existing agencies. Courts are not pro-active;

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15 Lawyers in the bar sometime take recourse to court orders to scrutinize legislative proposals to ensure that the Government comply with such obligations.
Parliament cannot deal with individual issues like a complaints agency; Governmental departments are not always judicious; local Governments units do not have the expertise required; and NGOs are not state machinery to command the respect of all in the governance system. Similarly, the functionaries created by the Constitution like the Commission for the Investigation of Abuse of Authority (CIAA) deals with only a part of the problem. A national institution is needed not only to provide remedies in the courts but also to promote a change of culture in public bodies, to avoid the need for litigation. That will not happen without a statutory body as an engine for change.

Moves towards a culture of human rights at the minimum means a statute passed according to the prevailing standards, creation of an independent state financed body which can be strategic, enabling, expert and authoritative, professional, accessible and accountable. Its functions at the minimum are to provide information and guidance to public authorities, including private and voluntary bodies about their responsibilities under the human rights obligations of the state. It must promote awareness of human rights, including the obligations that this entails. In addition, such a body should monitor the extent to which human rights are respected and advise the Government and Parliament on the adequacy of existing law, policy and practice. It must also support individuals by referring them to appropriate external legal advisors; supporting them in court proceedings; bringing proceedings itself; and intervening as *amicus curiae*.

Such a body can conduct public inquiries, assist the UN in scrutinizing the country's record on human rights, and speak on issues which the Government or other state functionary do not speak or misfire or mislead. In other words, a nationwide body, steered by a separate national commission, was needed to provide some common services, with the authority to speak on human rights for the country as a whole. Unlike the court there was a need of having a body with the power to act on its own initiative; have access to officials and information for its inquiries; and report to Parliament through the King.

By 1996, there were already a few parliamentarians eager to take a private bill to Parliament if the Government was not taking it itself. A series of seminars to explore the implications of a National Human Rights Commission for Nepal was organised in 1995-96 by various human rights organisations. Those seminars were instrumental in the growing recognition among those working on separate human rights issues that a human rights commission could support the work of the existing courts and other Governmental agencies. Finally, in 1997, the Human Rights
Commission Act was tabled in the National Assembly by a Nepali Congress member as a private member's bill and was passed. The enactment of the Human Rights Commission Act 1997 was an acknowledgement that greater statutory protection was needed for human rights in the country, beyond that being provided by the existing legislation. The Act provided access to a wide range of rights for which individuals previously had no remedy, or had to seek a remedy in courts, which had always been a difficult and time consuming process. A few commentators of the Constitution had the following remarks on this body:

The setting up of a National Human Rights Commission was done as a part of the search for a new and effective institution to deal with problems regarding violations of human rights, but it is neither a substitute for the rights and remedies inherent in Articles 23 and 88, nor does it have any sort of appellate role. The Act cannot even by amendment, strip the Supreme Court of its jurisdiction or alter the role of the judiciary in general in the scheme of separation of powers. The intent of the Act, at most, is to secure Governmental accountability in case of infringement of any fundamental rights of the people. Courts of law respond to the violation of human rights only after their jurisdiction is invoked and so the court's redress of injury to human rights is compensatory in nature. The National Human Rights Commission, on the other hand is structured to deal effectively with questions involving human rights with recourse to simple and inexpensive procedures. The premise of the Act is clearly stated in its preamble which sets out the intents and purpose of the Commission as being to strengthen the institutional arrangements through which human rights issues can be addressed in their entirety in a focussed manner.  

Human rights are not only a matter of law, essential though that protection is, but a code of ethics which requires us to treat each other with dignity and respect. The protection of human rights is vital not only to protect the most vulnerable from the abuse of power, the deprived and downtrodden, the ethnically marginalized communities, Dalits and women, but to the quality of life of every individual and to the cohesion of our communities. The avoidance of degrading treatment, respect for different cultures, and tolerance of the views of those with whom we disagree, are obligations that impinge on the lives of us all, adult and child. Respect for the human rights of others is the essence of social responsibility, of our mutual obligations, be it to those for whom we provide public services, or our neighbours and family. Therein lies the issue of a culture of human rights. The passage of the Human Rights Commission Act 1997 was thus an important step in this regard.

16 Surya PS Dhungel et al, 195
Establishment of the Commission

The Commission itself was not established until 2000. The political instability had been so intense after 1990 elections that there was hardly any progressive thrust in the Government and visible progress on the official front. Certain commentators saw this delay as evidence that the then Government lacked any real intention to protect and promote human rights in Nepal. But the increasing Maoist violence and escalation of human rights violations increased the urgency to establish independent human rights body in this changing national environment.

Eventually, in May 2000, the Commission was provided with basic facilities and space for its head office in Harihar Bhawan, Kathmandu. The Commission shares a building with the Ministry of General Administration of His Majesty's Government. Its building is being renovated with the help of UNDP. Currently, following an administrative restructuring of the Commission in early 2003, it is organized into five operational divisions – 1) The Legislative Assistance Division, 2) The Promotion Division, 3) The Protection & Monitoring Division, 4) The Planning, Internal Monitoring and Evaluation Division and 5) The Operations Division. The latter two divisions deal with organizational as well as daily administration matters. There are four Commission members and a Chairperson appointed to the Commission. Each member heads a separate division with the Chairperson representing the Commission overall. A Secretary is appointed to the Commission by His Majesty the King of Nepal, and is responsible for the day-to-day administration and management of the NHRC. In 2003, the Commission established the post of National Rapporteur on Trafficking in Women and Children. The Rapporteur’s office is housed in the same building as the Commission, with separate administrative staff and a mandate limited to human rights issues relating to trafficking in women and children.

The Chairperson and Commissioners of the Commission were appointed according to the Human Rights Commission Act, 1997. The Chairperson is a former Chief Justice of Nepal. The main criteria for appointment of other members are based on relevant expertise, with the Commission reflecting the diversity within the population.

On the surface then, it appears that the Commission has been established to play an integral role in advancing a culture of, and respect for, human...

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17 Institutions in the Asia Pacific Region. op cit. Chapter 5.
rights in Nepal. However, has the Commission been given appropriate tools to protect and promote human rights and how well has it used these tools over the past three years? Attempting to answer these two questions is the primary aim of this book.

**Independence**

In addition to an appropriate mandate, independence is arguably the most fundamental prerequisite for an effective and acceptable human rights commission:

> It is crucial that those public bodies which monitor the exercise of power by the State and its agencies should be able to operate as freely as possible from government control.¹⁸

**Independence through legal and operational autonomy**

There is considerable variation in the manner of setting up national human rights commissions. The Paris Principles emphasize that national human rights institutions should be established with a constitutional or legislative mandate in order to safeguard the organization’s independence. As stated above, Nepal’s National Human Rights Commission (NHRC) was set up under the Human Rights Commission Act (1997) (hereafter the ‘the Act’). The existence of the Act is, of itself, an indication that the proposed NHRC would be operating with a degree of freedom from government interference.

Operational autonomy is addressed further under section 3 of the Act by defining the Commission as a body of perpetual succession able to use its own separate stamp. Section 3 of the Act also vests the Commission with the legal status of an individual regarding dealings with property and the ability to sue (and be sued) in its own name. These provisions work to give the NHRC basic guarantees of operational continuity.

Under section 23 of the Act, the Commission is required to consult with His Majesty’s Government in making rules, pursuant to the Act, and regarding remuneration and facilities of Commission employees. Apart from this restriction, the Commission is not obliged to consult with the Government and is able to frame the necessary rules for developing its working methodology on its own. Further, section 16 of the Act stipulates

that the Commission is free to set up branch offices without referring to the Government for approval.

The most important indicator of operational independence is the ability to undertake investigations autonomously. The Paris Principles heavily emphasize that human rights commissions should have the power to initiate an investigation without referral to a higher authority or receipt of an individual complaint. The ability to act on its own initiative is one of the most useful tools a commission can possess as it allows such a body to rapidly respond to human rights violations.

Gomez points out that the speed in which an investigation can be conducted impacts on the chances of resolving the issue in a satisfactory and timely fashion. The ability to undertake autonomous investigations also differentiates a human rights commission from the judicial system as the courts almost always act on the receipt of a complaint. Thus, the presence of this power further highlights the potential of commissions to provide an effective alternative avenue for victims of human rights abuses to access justice without costly and lengthy court proceedings.\(^{19}\)

Under section 9 of the Act, the Nepalese NHRC has the authority to autonomously initiate investigations on human rights issues. Section 11 of the Act endows the Commission with powers to efficiently undertake such investigations. These provisions will be examined in detail when analysing the Commission’s mandate below. Their combined effect, however, is to provide the Commission with independent authority to respond to human rights violations and emergencies quickly and efficiently.

The Act has given the Commission the authority to manage it’s own affairs and to undertake investigations on its own initiative. Thus, the NHRC has achieved the basics of legal and operational independence.

**Independence through appointment and dismissal procedures and pluralism of members**

The importance of a politically neutral system for appointing commissioners is stressed by the Paris Principles and detailed in some length within the UN handbook. These guidelines also advocate for a ‘pluralist representation’ when appointing Commissioners. That is, Commissioners should be drawn from a broad cross-section of society

ensuring diversity of opinion and respect for different approaches to human rights. The UN Handbook advises that the founding statute should set out the terms and conditions applicable to the appointments and dismissals of commissioners. The legislation should include the criteria, method and duration of appointment, as well as the possibility of reappointment. The Handbook suggests further that the mechanism and reasons for dismissing commissioners should also be laid down in the statute.

The Act sets out the provisions relating to the constitution of the Commission and terms of service of the Commissioners. Among other things, the Act stipulates that the Commission be headed by one of the retired Chief Justices or Judges of the Supreme Court of Nepal. Three members of the Commission should be persons who have made significant contributions to law, human rights, society, communication or journalism. In addition, one member should be chosen from among retired persons who have held positions in constitutional bodies or as a special class officer of His Majesty’s Government.

According to the Act, appointment of Commissioners is to be carried out by the King upon the recommendation of a committee comprised of the Prime Minister, the Chief Justice of the Supreme Court and the Leader of the Opposition Party in the House of Representatives. The term of office for members is five years, with the option of reappointment at the end of the term. The procedure for dismissing members is detailed in section 6(d) of the Act. Under this provision, the Human Rights Committee of the House of Representatives may remove a member of the Commission for reasons of incompetence or misbehaviour, if a resolution to do so is adopted by two-thirds of the Committee.

Criticism has been made that this structure does not guarantee adequate representation from experienced human rights practitioners in Nepal and, at present, there is only one Commissioner with significant experience in human rights activism.\textsuperscript{20} What is considered more relevant however, is the manner in which this appointment process was implemented in practice. That is, were the appointments made in a transparent manner that maximized consultation with civil society groups in the country? This has been recognized as an effective way to ensure committed and active

\textsuperscript{20} South Asia Human Rights Documentation Centre. *Institutions in the Asia Pacific Region*, op cit. Chapter 5.
commission members.\textsuperscript{21} At the time of forming the NHRC the appointments procedure laid down in the Act was adhered to. In practice, however, only the King and the major political parties were involved in putting forward candidates and appointing Commissioners. There was little or no consultation undertaken with representatives from human rights NGOs and Nepalese civil society.\textsuperscript{22}

As noted by the Commonwealth Secretariat:

> Whatever the appointment process, the crucial requirement for appointees is that they are demonstrably politically neutral and persons of high integrity and standing. Without these characteristics, the office is unlikely to gain the confidence of the public.\textsuperscript{23}

It is concerning then, that the political neutrality of certain NHRC Commission members has been questioned by representatives of the Nepalese human rights community.\textsuperscript{24} The NHRC’s only female Commissioner has also publicly aired allegations of corruption among the other Commissioners and mal-administration within the Commission itself.\textsuperscript{25} Perhaps more damaging to the Commission’s credibility are the recent public allegations of sexual harassment by a male Commissioner towards a female NHRC staff member. It is not within the scope of this paper to analyse these issues in detail, although they should be viewed seriously. What can be commented on is that these incidents significantly diminish public confidence in the process used to select people who are ‘demonstrably politically neutral and persons of high integrity and standing’.

From the analysis above, one can conclude that the process for selecting and appointing Commissioners is flawed. More consultation needs to be undertaken with the human rights community and Nepalese civil society before Commissioners are appointed. Only then can the Commission claim independence through an open, inclusive appointments procedure.


\textsuperscript{22} Interviews with NHRC Capacity Development Project staff


\textsuperscript{24} Interview with a former Nepalese human rights activist, 20 October, 2003

Independence through financial autonomy

Importantly, both the Paris Principles and the UN handbook advise that a Commission’s financial arrangements should not be linked to the budget of a government department and should preclude political interference. Funding should be sufficient enough to allow for a national institution to ensure ‘smooth conduct of its activities’.  

The Act makes no specific provision concerning the Government’s responsibility to provide sufficient financial resources to the Commission. Instead, the Act guarantees that the Commission is able to secure financial support from external ‘donor agencies’. Arguably, the danger in this approach lies in the implicit acceptance that the Government will not adequately fund the Commission in accordance with the Paris Principles.

In practice, since the Commission commenced operations in 2000, a constant claim of staff and advocates of the NHRC is that organizational effectiveness is undermined by the lack of government funding. High staff turnover has been attributed to an inability to pay sufficient wages from the budget provided to the NHRC by the Government. The current resurgence in the conflict between the State and Maoist rebels has also led to rumours that the Government will withhold, for security purposes, a percentage of the 2003-2004 budget promised to the Commission. This added uncertainty underlines the difficulty that the Commission faces in ensuring even the bare operating costs for its activities.

The Commission has been successful, however, in accessing international donor funding to carry out specific projects such as a research report into the effects of torture and a human rights monitoring project - the ‘Responding to Crisis’ project. Further, there has been significant international support for the Commission in the form of capacity development. Rather than funding the Commission directly, international donor agencies and aid giving countries pooled funds to finance an NHRC Capacity Development Project for three years (2001 – 2004). Under the auspices of the United Nations Development Program, this project provides the Commission with technical support and strategic coordination advice. Although not directly contributing funding to the Commission,

28 National Human Rights Commission. 2003. Study on Insurgency Related Torture and Disability: Human Rights Violations in the Context of Maoist Insurgency. This project was funded by the British Embassy in Nepal. The Responding to the Crisis Project is currently jointly funded by British, Danish and Norwegian development agencies.
there is potential for the NHRC to become dependent on this Capacity Development Project for expertise and strategic direction. It is likely that the Capacity Development Project will be funded for at least another three years at the end of 2004. Strategies should be developed now for phasing out the Capacity Development Project to avoid claims of undue interference by international agencies. At the same time, the Commission should continue pushing for more explicit guarantees of adequate government funding, such as modifying the Act, so that it can meet its basic operational needs.

Ultimately, however, insufficient funding does not automatically guarantee an ineffective commission. Human Rights Watch noted that although nearly all commissions in Africa were inadequately funded:

> The more credible and active human rights commissions, while also mentioning being constrained by finances, never used the lack of funding as an excuse for inactivity. In fact, the more active human rights commissioners often illustrated to Human Rights Watch the ways in which they had managed to get around budget constraints.29

Assessing how well the Commission has performed, within its financial constraints, will be the main objective of the second part of this paper. Before this, it is necessary to examine whether this institution’s legally defined mandate and powers satisfy the minimum standards envisaged under the Paris Principles.

The Mandate and Powers of Nepal’s National Human Rights Commission

Along with independence, a broad mandate is one of the most important factors emphasized by the Paris Principles and associated international guidelines:

> A national institution with a narrow, carefully circumscribed mandate and little independent authority may lack the knowledge, experience and will to advise widely. Conversely, an institution with a broad mandate and independent status will, by definition, possess a greater capacity to acquire and synthesize information and, thereby to develop sophisticated opinions on human rights matters for transmission to those able to effect substantial change.30

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Briefly, the Principles state that the responsibilities of a national human rights institution should include the right, acting on its own or by request, to submit opinions, proposals, reports and recommendations to competent authorities, including Parliament and Government, on any human rights issues and to publicise its opinions. A national institution should be vested with the ability to examine new and proposed legislation for conformity to fundamental human rights principles. It should be able to recommend new legislation and administrative measures, and to hear any person and obtain any information and any documents necessary for assessing situations within its competence.

A national human rights institution should also be able to contribute to programmes for research and teaching about human rights and to promote awareness, particularly through the media.

The primary responsibility of the Commission, under the Act, is the 'protection' and 'promotion' of human rights. The promotion and protection of human rights describe two distinct categories of functions that a national institution might perform. In order to understand the competence to promote, one needs to draw on the international promotional obligations. In consequence, a NHRI can explicitly be assigned by its hosting state either to support public authorities in discharging their promotional obligations or it can be assigned to fulfil promotional obligations by itself like in the field of human rights education, dissemination of information, fact finding, public participation, cooperation with NGOs, prevention of discrimination, and providing alternative remedies.

In section 2 (f) of the Act, human rights are defined as those relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights embodied in the international treaties to which Nepal is a party. According to the Paris Principles, the mandate of a NHRI should clearly include reference to international human rights law. It is not sufficient to be subject to national law (e.g. by solely administering national anti-discrimination legislation). Since the NHRI's mandate should be as broad as possible, the minimum normative spectrum that has to be covered is: the Universal Bill of Rights (consisting of the Universal Declaration on Human Rights, Covenant on Economic, Social and Cultural Rights, the Covenant on Economic, Social and Cultural Rights).
According to the Paris Principles, the particular responsibilities of NHRI are: (1) to advise state authorities and others, (2) to monitor state behaviour, (3) to investigate alleged human rights violations, (4) to conduct thematic inquiries, (5) to disseminate information, (6) to develop and conduct educational programmes (in particularly with respect to anti-discrimination), and (7) to handle complaints in a non-judicial mode. In support of the national implementation processes, the work of a national institution implies the examination of existing laws and proposals (bills) with respect to international human rights law, advise state bodies with regard to the construction and application of international human rights standards, and monitoring state bodies as to whether their activities are in compliance with human rights norms (including the inquiry of alleged human rights violations).

An analysis of the Paris Principles reveals that NHRI are to be provided with appropriate investigation powers: NHRI have to be competent to "hear any person and obtain any information and any document necessary for assessing situations falling within its competence." But they are not to be equipped with powers to make binding decisions.

In summary, NHRI are not designed to be a substitute for any traditional state entities; they are not to takeover any core functions usually fulfilled by the Executive, Legislative or Judiciary. A NHRI is a complementary institution filling an institutional gap in the respective country with regard to human rights promotion and protection; this will often be with respect to national implementation arrangements since traditional institutions usually miss this element.

An NHRI needs to be set up by a "legislative text." A legislative text means a law that is binding on present and future governments, regardless of whether the originator is the national parliament or the Head of State. The law is to specify "its composition and its sphere of competence; it is to secure the existence and the operational stability of a NHRI against governmental threats. Therefore, a governmental legal act does not live up to the Paris Principles as long as the Government itself can solely decide on its establishment or to amend its composition and competence without inserting other democratic bodies of control. Special considerations have to be made, e.g. with respect to Islamic countries where the leader of the Government and head of state can practically coincide with each other.

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31 See Paris Principles, Section 3(b)
32 Paris Principles, Part 1, para. 2
The Paris Principles further require special arrangements to secure legal, personal and financial independence from the Government. According to this concept, the handling of complaints (quasi-judicial competence) is not an essential element. The status as a NHRI cannot be questioned if an institution is not assigned with this capacity.

As the analysis indicates, the Paris Principles do not prescribe any fixed legal shape. They contain a set of positive features that differentiates NHRIs from other national entities, such as non-governmental organisations, truth commissions, parliamentary commissioners, etc. With respect to institutional framing, the Paris Principles stands for an open-textured concept.

Along with this broad definition of human rights, the NHRC’s mandate is further delineated by the functions set out in Article 9 of the Act. Under this provision the NHRC’s functions include: investigating petitions on its own initiative or on behalf of victims of alleged human rights violations; making recommendations to the Government for improving human rights situations; conducting research; raising awareness of human rights; supporting human rights organizations; reviewing human rights situations; and providing input on reports to be submitted to UN Committees.

It is the primary responsibility of the Commission to protect and promote human rights. In order to perform this responsibility, the Commission may carry out various functions. The first among such functions is to conduct inquiries and investigations on the violation of human rights and abetment thereof, and carelessness or negligence in the prevention of violations of the human rights by any person, organization or authority concerned.

This can be done upon a petition or complaint presented to the Commission by the victim himself /herself or any person on his /her behalf or upon information received from any source, or on its own initiative. Inquiries in or investigations on the matters conducted by the Commission itself, or caused to be conducted through any person or an authority or employee of HMG in accordance with the directions of the Commission.

In such cases they have to submit the report to the Commission. Subsection 4 of Article 9(2) states that if the Commission finds such a petition, complaint or information with no basis or is of such a nature that it cannot be enforced by the courts of Nepal, it can withdraw its involvement with it. The Commission also has the power to inquire into a matter with the permission of the court in respect of any claim on violations of human rights which is *sub-judice* in any court.
The Commission can visit, inspect and observe any authority, jail or any organization under His Majesty's Government and to submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights. During the passage of the Human Rights Bill through Parliament the then Home Office Minister of UK Lord Williams of Mostyn, QC rightly said:

‘Every public authority will know that its behaviour, its structures, its conclusions and its executive actions will be subject to this [human rights] culture. It is exactly the same as what necessarily occurred following the introduction of, for example, race relations and equal opportunities legislation...Every significant body, public or private, thereafter had to ask itself with great seriousness and concern ‘Have we equipped ourselves to meet our legal obligations?’ That has caused a...transformation in certain areas of human rights. The same is likely to follow when this Bill becomes law.’

In the absence of the Human Rights Commission there will not be any agency in the formal structure of the Government to provide guidance to public authorities on their responsibilities under the human rights commitment of the Government. Ministries and departments have neither the means nor internal mandate to reach out to public bodies and provide the guidance they need, nor to monitor any resulting change in policies or practices. Substantially greater effort should be made to ensure that public bodies have guidance for complying with human rights and on implementing good practice measures and that this compliance should be monitored.

An independent, statutory human rights commission is needed to provide guidance to public authorities, to be a source of authoritative information on the law, to promote awareness of the importance of human rights principles and the responsibilities they entail, particularly among young people and to monitor compliance:

‘The Human Rights Act needs support. In order to develop a culture of human rights, the Government needs to create an institution whose job it is to promote such a culture. The danger is that without a Commission, developing a culture will be left to lawyers and the courts – not an optimistic picture’.

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33 Second Reading Human Rights Bill, House of Lords, 3 November 1997 col 1308
34 ‘The role of the Task Force and the need for a Human Rights Commission. Paper by NGO Task Force members. HRTF (00): 12
It can review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions.

Nepal is legally bound by a wide range of international human rights standards, of which a limited number are enforceable in the country's courts under Article 126 of the Constitution. The international enforcement machinery, other than the courts, has little impact on Nepal's law and practice. The effectiveness of Nepal's prevention and enforcement mechanisms is therefore essential. The public bodies that are expected to promote and enforce that legislation are hampered by limitations in the law by lack of resources, and by their division into separate organisations. The differences in their mandates and the functions are not helpful to those needing access to them.

In fact, there are no public bodies specifically charged with promoting and enforcing the international standards on social, economic and cultural rights. While there is a need for incorporation of treaty obligations into law in such a way that these obligations can be better protected by the law courts, there is also a need to extend the range of enforceable rights and effectively impose new legal duties on public bodies to uphold them. The existing statutory bodies will not be able to provide any kind of service advice, monitoring or promotion - in relation to most of the rights which will become enforceable when the enabling legislation comes into force. The Commission can study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty's Government for effective implementation of the related provisions. The Act is clear to mention that the Commission can give necessary recommendations to His Majesty's Government regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights. On the matter of Nepal's obligation to furnish reports under international treaties on human rights, His Majesty's Government shall furnish reports upon receiving the opinion of the Commission thereon.

One key criterion for an effective domestic system of human rights protection is the procedure within the government and parliament which will scrutinise draft legislation and existing provisions to ensure that they
conform to international human rights standards.\textsuperscript{35} The scrutiny of policy proposals within Whitehall, for example, is governed by \textit{Questions of Procedure for Ministers and by the Civil Service Code}, with regards to the administrative guidance given, respectively, to Ministers and to civil servants as to the proper conduct of government business. The provisions of the Civil Service Code which came into force on 1 January 1996 summarise the Minister's duty to "... comply with the law including international law and treaty obligations ..." and state that civil servants are under a parallel duty, framed in precisely the same terms.

Rejecting the need for new scrutiny procedures, the previous Government stated:

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Ministers putting proposals to Cabinet or a Ministerial Committee are already required by \textit{Questions of Procedures for Ministers} to cover, where appropriate, the impact of the European Convention on Human Rights. In addition, where a department is considering legislation, it is required to ensure that its plans are compatible with the international human rights obligations of the United Kingdom, including the European Convention on Human Rights in particular.\textsuperscript{36}
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There is a wide range of human rights issues of concern in Nepal. For some, if they can get access to the courts, a remedy may be available under any Act or legislation. But many of the issues raised reflect systemic problems for which an individual remedy in the courts may not be the most effective means to achieve change.

The Commission can evaluate the existing human rights situation of the country. It can undertake or cause to be undertaken research in the field of human rights. It can publicize and propagate human rights education among the various sections of society through various seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights. It can also encourage the functioning and efforts of institutions working in the non-governmental sector.

The most important among the powers of the Commission is its power \textit{to carry out such activities, as it may deem necessary and appropriate for the}

\textsuperscript{35} In the UK there is evidence that these procedures are inadequate: of the 29 European Commission for Human Rights judgments up to November 1991 finding the UK in breach of the Convention, 22 involved breaches within primary or secondary legislation itself. See D. Kinley, \textit{The European Convention on Human Rights: Compliance Without Incorporation} (Dartmouth: 1993)

enforcement, promotion and protection of human rights. This clause enables the Commission to intervene in a wide spectrum of issues having human rights implications. This provision enables the Commission not simply to ensure access to rights under the fundamental rights within the Constitution within our domestic courts but also to promote respect for rights within the private and voluntary organisations with public functions – who need to carry out the necessary audit of their policies and practices to ensure that respect for human rights is built into their decision making and treatment of the public.

The powers given to the Commission to carry out these functions are provided in section 11 of the Act. Under this provision the Commission has the same powers as a Nepalese court with regard to gathering information, summoning and examining witnesses, and the procurement and examination of evidence. Section 11 also empowers the Commission, pursuant to the existing law of Nepal, with the ability to search for and seize evidence relating to subject matter of its inquiry. This section also gives the Commission the power to hire experts, conduct public hearings and to delegate its functions and powers to committees and sub-committees for the purpose of fulfilling its stated mandate.

The Act has addressed the mandate requirements of the Paris Principles to some extent. However, there are several weaknesses in this piece of legislation that could be amended in order to strengthen the work of the NHRC in Nepal.

Section 10 of the Act identifies those areas deemed “beyond the jurisdiction of the Commission”. They include matters under the jurisdiction of the Military Act (1959) and matters that may have adverse effects on treaties between Nepal and foreign governments or on the security of the Kingdom of Nepal. Section 10 clearly states that Commission shall have no power to inquire into or institute any other proceeding on any matter within the jurisdiction of the Military Act. It must be noted that nothing will bar the Commission from carrying out the functions mentioned in this Act on a matter in respect of which the court may exercise its jurisdiction pursuant to the Constitution and the prevailing law.

This aspect also works regarding any matter certified by the Chief Secretary of His Majesty's Government that it may have adverse effect on the treaty concluded between His Majesty's Government and any foreign government or international or inter-governmental organization, or on the security of the Kingdom of Nepal, and any matter certified by the Attorney
General that it may have adverse effect on the conduct of an inquiry and investigation being carried out in accordance with the law for the purpose of identifying the crime or the criminal.

The Military Act essentially gives the Royal Nepalese Army (RNA) the power to govern its own affairs including establishment, organization, mobilization and disciplinary affairs. Ultimately this ensures that the NHRC does not have any jurisdiction over the Army which is answerable only to the King and the National Security Council.37

In practice this has meant that the Commission is restricted in its investigations of human rights violations by the armed forces. Staffs of the NHRC have encountered serious difficulties in visiting RNA detention centres, and securing access to parts of the country where military operations are taking place. Authorities have also repeatedly ignored requests for information by the Commission concerning alleged human rights abuses by the armed forces. Thus, the Commission’s lack of jurisdiction over the Nepalese Army detrimentally impacts on its effectiveness as a human rights defender.

Section 10 of the Act also exempts subjects provided by the Attorney General “that can adversely affect on investigation, implementation, verification under prevailing criminal laws.” The Attorney General represents the Government, therefore if the Government feels uncomfortable with the activities of the Commission it may be able to intervene through the Attorney General. Therefore, this provision can be viewed as another possible restriction on the mandate of the Commission.38

Another issue relating to the mandate and powers of the Commission is whether the NHRC should be able to enforce its own decisions. The ability of national human rights commissions to enforce their decisions has been the subject of much recent debate.39 The preamble to the Act states that the Commission should be established not only for the protection and promotion of human rights but also for the effective enforcement of such rights. However the decisions and conclusions of the NHRC are non-binding and can be ignored by Government authorities.

37 The NSC is comprised of the King, Prime Minister, Defence Minister and Commander-in-Chief of the army. When Surya Bahadur Thapa was appointed Prime Minister on 4 June 2003, he retained the Defence Ministry portfolio.
38 Institutions in the Asia Pacific Region. op cit. Chapter 5.
It is argued here that the National Human Rights Commission of Nepal should not attempt to replicate the enforcement power of the courts. Apart from the incompatibility inherent in combining the roles of prosecutor and judge, providing an adjudication function is highly cost intensive and would further strain the Commission’s limited resources. This view is reinforced by Amnesty International’s guidelines on effective human rights commissions.

The Amnesty standards emphasize that while human rights commissions can be an important mechanism for the protection of human rights, they can never replace and should not in any way diminish the legal structures enforced by an independent and impartial judiciary.\(^{40}\)

The NHRC is a recommendatory body and should seek to exert influence in a manner that does not replicate the enforcement power of the courts. However, the limitations on the Commission’s jurisdiction, particularly with regard to the Military, significantly reduce the NHRC’s effectiveness and should be removed.

On 10 March 2004, based on these statutory provisions, the Commission asked the Government to reaffirm its co-operation with the exercise of the general ambit of NHRC powers, including the fact that NHRC may:

a) Receive communications from any individual, group of individuals or body in Nepal or elsewhere, containing reports of human rights violations. NHRC may choose to investigate any allegation, with or without a formal complaint, or on its own initiative. Where there may be a basis for criminal prosecution, allegations considered by the NHRC are passed, as appropriate, to the relevant national legal structures. NHRC may also monitor the effectiveness of investigations carried out by other national bodies or institutions. The findings of an NHRC investigation are made available to persons concerned, unless doing so would jeopardize an ongoing investigation or the safety and security of the alleged victim or others;

b) Visit any place, institution or establishment freely and without prior notice;

c) Hold its meetings, including public hearings, freely anywhere in the national territory;

d) Interview freely and privately any individual, group of individuals, officials or members of bodies or institutions;

e) Collect by any means it deems appropriate such information as it considers relevant;

f) Compel attendance of witnesses and production of relevant documents or other material;

g) Make recommendations to HMG on the basis of any conclusions it has reached with respect to cases or situations it may have considered;

h) Offer its support to any body or institution in Nepal in order to help improve the protection of human rights and increase respect for the rule of law;

i) Consult any individual, group of individuals, officials or members of bodies or institutions;

j) Plan and carry out educational and information campaign on human rights and the functions of NHRC itself;

k) Use the media to the extent useful for the fulfilment of its mandate;

l) Report periodically through public reports; and

m) Expand its staff or other representatives, and extend its offices as it deems necessary.41

The Issue of Accountability

The issue of accountability is also very important because it is partly about creating a line of authority that will ensure that the national institution can do its job without interference from those whom it is trying to hold to account. It is also about ensuring that the institution's clientele - the public at large - are able to see what it is doing in their name and ensure that it is performing properly. As such, accountability is seen by some as going to the core of a commission’s perceived independence and overall credibility:

If the public is unable to see the work of the human rights commission or the results of that work, then there is no opportunity for them to ascertain the independence of the commission. By not making statements or

reports public, a human rights commission is hampered in its ability to be seen by the public as a protector of their rights, and may even be complicit in the secrecy that protects perpetrators of human rights violations.\footnote{Human Rights Watch. *Protectors or Pretenders?: Government Human Rights Commissions in Africa.* http://www.hrw.org/reports/2001/africa/overview/factors.html. (4 January, 2004)}

According to the UN handbook accountability is considered a two way process – to the Government or Parliament on the one hand, and to ‘the constituency it was established to assist and protect’ on the other.\footnote{UN Centre for Human Rights. *National Human Rights Institutions.*} With regard to public accountability, the UN handbook emphasizes transparency and wide dissemination of Commission reports.

In Nepal, accountability to the Government is required by section 14 and 15 of the Act. Section 15 of the Act calls for the Commission to maintain proper accounts and to make them available for scrutiny by the Auditor General. Section 14 details a formal reporting obligation to Parliament requiring the NHRC to “prepare an annual report on the acts and actions carried out by it and submit it to His Majesty” after which “His Majesty will cause the report to be laid before Parliament”. The annual report is a vital public document that not only attempts at providing a regular audit of the Government’s performance on human rights but also an account of what the national institution has done. There maybe some tension between the confidentiality of the investigation process, which is often in the interest of the complainant, and the need to publicise findings. However, the Commission has done well in its conviction that the obligation to the public is broader than the sum of its individual complaints. The legal accountability of any institution created by law is no doubt to the Constitution and the legal system of Nepal.

Accountability to the public is addressed to some degree by section 14(2) of the Act. This provision requires the Commission to make information about its activities available to the public at least once every year. In practice, the NHRC has adopted a strategy of high visibility. Its major decisions, recommendations and project outcomes are communicated through regular e-bulletins, press releases, a web site and through materials, such as annual reports and other thematic reports, made available to the public through various media and in the Commission’s small resource centre. A recent book dealing with achievements of the Commission over the last four years tries to capture important trends in
The broader public accountability has also been achieved through the relationship that the Commission has with non-governmental bodies. Similarly, regular consultations with human rights activists and civil society organizations not only allow the Commission to benefit from their experience and insights but give the latter an opportunity to scrutinize the institution’s performance.

The evaluations and recommendations contained in the second half of this paper are part of the Commission’s effort to be a transparent and accountable institution. It is hoped that they may provide encouragement for the Commission to continue assessing its own work and making the findings available to the public that it serves.

Spencer and Bynoe emphasize the importance of this when they state:

> Commissions should evaluate their own performance and make the outcome public. To do this, they need to identify the criteria by which their own effectiveness can be regularly measured. In that way they can adopt the most effective strategies and adapt to changing circumstances and opportunities.  

The Commission has the right to act on its own initiative, without direction from Government, although a Minister might request the Commission to advise on a particular issue. It reports to Parliament, in effect the Human Rights Committee, through the King, and is accountable to the Office of the Auditor General only for probity in relation to its financial affairs. It appoints its own staff (although some secondment from other public bodies especially from the Judicial Service Cadres of His Majesty's Government is considered valuable way to attract particular expertise. A positive working relationship with key Government departments is essential, and the Commissioners and staff will need to find the right balance between independence and influence in managing that relationship on a day to day basis. The approach, authority and tone the Commission adopts will be vital to the success of that relationship.

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Chapter - IV

Major Activities and Their Contours

This chapter adheres to the argument that, no matter how well crafted the founding legislation and how well a commission is formed, these factors will not, by themselves, guarantee the promotion and protection of human rights. A better measure of effectiveness lies in evaluating a commission’s performance and impact since it was established. That is, by looking at what a commission actually does and how well it does it.

It is not possible within the constraints of this research, to establish criteria and rigorously evaluate every project that the NHRC has undertaken since opening its doors in May 2000. Instead, the approach taken here is to analyse a sample of activities and begin the process of assessing how well the Commission is exercising its mandate.

The NHRC was established with the mandate of protecting and promoting human rights in Nepal. The Commission undertakes to achieve this mission by working in three main areas: 1.) prevention through promotion of human rights through education and information; 2.) protection through an effective complaint and investigation mechanism; and 3.) prevention through monitoring compliance of existing law, policy and practice and scrutiny of proposed legislation and policy. For the purpose of this chapter, the Commission’s activities will be analysed using these three broad categories. It needs to be emphasized here that the Capacity Development Project has focused on all these activities according to the requirements of the Commission.

Prevention by Promoting Human Rights through Education and Information

The main objective of human rights education and information is to help prevent violation of human rights. When done well it is invaluable and it is an area of work that the Commission is in a unique position to accomplish a high standard. It is also a way of doing human rights work that does not

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antagonize the perpetrators of human rights violations for at least not as much as investigating them.

The Commission’s strategy for achieving its objectives in this area of work is basically set on strategic objective 7 of the Strategic Plan, which outlines the key priorities including helping in the inclusion of human rights education in school curriculum and in non-formal education packages; ensuring that human rights education is a core subject in the staff training programme of the Ministry of General Administration, or of the appropriate ministry in the charge of staff training, and ensuring that the Government officers with quasi-judicial responsibilities are properly prepared by the respective departments to execute their quasi-judicial duties within the framework of the Constitution and in accordance with the international human rights standards. This also includes education and raising awareness of key policy makers, regional administrators of the Government and chief district officers; ensuring that the concerned authorities properly train security and army personnel before deploying them to active duty, ensuring that follow up trainings are provided to reinforce knowledge and behavioural changes, and promoting application of international standards of human rights in legal case building, litigating and imparting justice.

While dissemination of human rights information to public officials and professional groups have been recognized as priority areas, the Commission is also of the opinion that it should carry out highly selective and high impact promotional work in support of all strategic interventions and on emerging human rights issues. It also involves helping develop human rights curriculum for schools and a civil servant’s human rights training course; monitoring training for police and the Royal Nepal Army personnel, and establishing strong partnerships with human rights NGOs and civil society organizations, such as the media, to conduct human rights activities.48

The Commission has been working from the beginning in many of these areas. It has conducted many human rights training courses, interactive tutorials, study guides (brief introduction to various human rights topics) and regularly publishes newsletters and periodicals. Such programmes have involved senior officers of the armed forces, human rights monitors, journalists, law enforcement officials; lawyers and social workers. At present, the Promotion Division is preparing human rights curriculum materials to recommend for use in Nepal’s high schools. As several human

rights organizations have already developed and implemented credible human rights curricula in the Nepali context, the Commission is interested in getting them accepted by the concerned sector, and having it implemented. A better coordination and strengthening the work of the human rights community is being expected of the Commission rather than straining its limited resources by trying to ‘reinvent the wheel’ in this area. It has not yet been able to deal with the Ministry of General Administration, the quasi-judicial authorities, the judiciary and monitoring of the human rights training being provided to the security forces by the Government. With limited full time staff dedicated to the Promotion Division of the NHRC the scope of activities that the Commission can effectively undertake is necessarily restricted.

Since its inception, the Commission has been active in conducting training on human rights issues in Nepal. Recent topics have ranged from ‘understanding economic, social and cultural rights’ to Nepal’s obligations under the International Convention Against Torture. The Commission has adopted the approach that while it is vitally important to train Commission staff in understanding the application of human rights in Nepal, it is equally important to build a common understanding and respect for human rights throughout the wider community. Therefore, training is inclusive, with members of the Commission participating alongside key stakeholders from the broader community. For example, participants in a recent workshop on human rights investigation and monitoring techniques included international trainers, NHRC staff, local human rights NGO representatives, lawyers and volunteer human rights investigators.

In other words, the promotional work of the Commission has covered the involvement with education sector, public awareness campaigns, media work, etc. as well as targeted education for particular vulnerable groups; training of public officials about the human rights standards and norms to which they must comply; and training of human rights activists, including the staff of the national institution itself, in the skills required to do their work. These training activities also serve as a useful networking tool to create a two-way flow of understanding between external stakeholders and staff of the Commission about the role of the NHRC in Nepal. Although a large number of training activities and discussion/awareness programs have been staged by the Commission, most of these events have been held within the Kathmandu valley. It is only since September 2002 that the

49 The author visited two human rights NGO’s – Informal Service Sector (INSEC) and Human Rights and Environment Forum (HUREF) - and found that both organizations had already produced human rights educational materials and were using these resources in secondary schools in eastern and western regions of Nepal.
Building Capacity of National Human Rights Institutions: The Case of Nepal

Commission started working on its outreach programmes, and several such activities have been held in many districts around the country. Given that a high proportion of human rights violations occur outside this highly urbanized part of the country, the Commission understands that it has to target the correct participants in the most appropriate places to effectively build a culture of human rights throughout the country.

On this point, it is useful to note that one of the recognized strengths of the Sri Lankan Human Rights Commission is its ability to utilize a network of 10 regional centres set up by this Commission’s precursor – the Human Rights Task Force. The NHRC has recognized that without a similar institutional structure it is difficult for it to undertake widespread promotional and educational activities. According to its Strategic Plan 2004-2008, the Commission has attempted to address this problem by proposing regional offices in four outlying districts of Nepal, with one in Kathmandu. The first of these branch offices is due to be established in Nepalgunj in September 2004 with funds obtained from the European Commission, which is looking forward to a long term partnership with the Commission to help in its regional ambitions.

It is difficult to measure the Commission’s effectiveness in promoting an understanding and respect for human rights in Nepal. One indication of NHRC’s effectiveness in this area (albeit a weak one) is the amount of media attention dedicated to NHRC’s work. The Commission has aimed for and achieved a high media profile since launching its activities in 2000. In the period from June 2003 to January 2004 there were over 37 news articles, in various media, scrutinizing different aspects of the NHRC’s work.

**Prevention Through Review of Existing Legislation, Policy and Scrutiny of Proposed Legislation**

The Commission’s Legislative Assistance Division carries the responsibility of conducting research on the laws and rules of the country and compares them to the internationally accepted human rights conventions and provides suggestions and recommendations to the Government as to whether the existing laws are in conformity with Nepal’s obligations as a state party to the international conventions. To date, the Commission has already provided the Government with its suggestions on the International Covenant on Civil and Political Rights,

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the Convention Against Torture and the Convention on the Rights of Child. Similarly, it has also given explanations to the concerned sectors on the general comment of treaties and conventions signed by the state as obligatory to Nepal. It has also assisted in the preparation of shadow reporting of human rights NGOs by providing them necessary skills and training. The Commission has also promoted the need of conformity of national laws and practices with international standards with regard to anti-conflict/terrorism measures by explicitly stating the need for the contending parties to abide by the Geneva Conventions.

From the current strategic plan it appears that the Commission is attempting to review a very broad cross-section of existing and proposed legislation. The NHRC will be advocating for changes to: the existing legislation to ensure the right to life liberty and justice; the legislation to improve domestic application of newly ratified human rights treaties; and legislation to ensure respect for the right to food, health, shelter, education and work. The Legislative Assistance Division is also in charge of ensuring implementation of legislation that curbs domestic violence and the control of human trafficking and initiating new legislation or amending existing legislation to protect children from abuse.51 With such a diverse range of issues it is almost impossible for the Legislative Assistance Division staff of three to cover any one topic with sufficient depth. The Capacity Development Project is working with the Division to take outside help to do the job with their significant development.

In any case, the Commission is actively concentrating its scarce resources to enhancing its scrutiny function. That is, its ability to advise on the conformity of proposed legislation to international human rights standards binding on Nepal. In doing so, it could adopt a selective and strategic approach by focusing on draft legislation and policy with the greatest potential implications for human rights. One reason for giving priority to this role is that prevention is better than cure – and more cost effective. Another justification is that the NHRC occupies a unique institutional position in the human rights field. As a semi-government authority the Commission is well placed to advise on human rights implications of laws before they come into force. Gomez supports this view when he argues:

They are part of government, yet they can criticize government and engage with government as a ‘credible outsider.’ National institutions combine the advantages of an ‘official’ entity, with the creativity and imagination of a non-governmental organization. Their ‘semi official status’ allows them to interact with government departments and state

agencies closely, while the flexibility of the strategies they can potentially pursue makes them dynamic and proactive institutional players.\textsuperscript{52}

Of course the Commission should take care to advise only on draft legislation and policy that is in the public domain to avoid suggestions that it was providing assistance selectively or according to the demands of political parties.

The Nepalese Government has a patchy record for recognizing when the Commission should be consulted on its work, even where the Government’s responsibilities are clearly defined. For example, His Majesty’s Government is obliged by statute to furnish reports under international treaties on human rights only after receiving opinion from the Commission. In practice there have been several instances where this procedure has not been followed and treaty reports have been sent to international agencies without being viewed by the Commission.\textsuperscript{53}

If the argument that the Commission’s scrutiny role should be given precedence is accepted, what emphasis should be given to its review function? The importance of working closely with ‘other actors’ is emphasized by the Paris Principles, not just in the area of legislative review but also in the Commission’s overall work. Gomez suggests that strong partnerships with human rights organizations, in particular, are vital for boosting a Commission’s overall capacity:

Human rights organizations can be used by commissions for a variety of purposes: to provide training to their staff; to undertake investigations; to conduct field surveys; to assist in public hearings; to help formulate policy and legislation; to network; and to assist in monitoring and documentation. A willingness to forge creative alliances with human rights organizations will therefore be a strong indicator of the overall impact the commission has.\textsuperscript{54}

There are many human rights NGOs and individuals already advocating for changes to laws and policies infringing on human rights in Nepal. The Commission’s Legislative Assistance Division has already spent several months consulting with these activists and organizations to determine its priorities. This approach is commendable as it seeks to avoid unnecessary

\textsuperscript{52} Gomez, M. op cit. p 25.

\textsuperscript{53} Most recently, the Government failed to consult with the NHRC before submitting its last compliance report under the Child Rights Convention to the UN Child Rights Committee in Geneva.

\textsuperscript{54} Gomez, M. op cit: 25.
duplication of work. The NHRC should develop this strategy further. Rather than trying to assume responsibility for all legislative review, it intends to focus on coordinating and facilitating the efforts of Nepal’s human rights entities as they push for appropriate reforms.

The analysis above implies that the Commission still has to boost its relations with the Nepalese Government which does not fully regard the NHRC as an authority that should be consulted in major decisions that have human rights implications. On the other hand, the Government has acknowledged the status of the Commission by involving it in the effort to end the ongoing ‘people’s war’ between the State and Maoist rebels.

**Prevention of Human Rights Violations by Investigation and Monitoring**

As soon as the Commission was established, it started working in the area of investigations of human rights violations and handling complaints it received. This nevertheless is taken as the most important of all functions of the Commission. The encouraging evolution of the Commission’s work has continued during 2004.

As per the Human Rights Commission Act (1997) and the Human Rights Complaint, Action and Determination of Compensation Rules (2000), the Commission has been receiving complaints, preparing reports, seeking decision on complaints and then submitting its recommendations on the cases to His Majesty’s Government of Nepal. However, a lack of an effective system for these procedures, along with the uncertainty surrounding decisions or response to the Commission’s recommendations by the Government have been major challenges for the Commission in dealing with cases and complaints of human rights violations filed in the Commission.

Perhaps a more pertinent way of gauging the Commission’s capacity in this area is by looking at the number of complaints registered at the Commission over the past three years. Between the period since the establishment of the Commission and May 14 2004, the Commission has received a total of 2259 complaints and 503 cases were settled. Of these, decisions with recommendations were made on 27 cases and referrals were made to the Government for necessary action on 159 cases. Similarly, 186 cases have been dismissed and 131 cases are pending with no further
action being taken. While it is beyond the scope of this book to deal with all the cases, it would be pertinent to highlight some of the cases which were dealt by the Commission and then forwarded to the Government through the Cabinet Secretariat followed by the Government’s implementation of the Commission’s decisions:

- Action taken against security personnel involved in arbitrary shootouts and compensation sought for the families of the dead and injured victims during such shootouts.
- Victims of torture provided with compensation
- Compensation for maltreatment of women tortured on the allegation of practicing witchcraft
- Recommendation to prevent illegal detention of non-combatants and civilians.
- Recommendation for action against military officials involved in arbitrary executions of alleged Maoists
- Recommendation for action against Maoists involved in arbitrary executions and abductions of soldiers.
- Recommendation for rightful ownership of land, etc

What may be a more revealing analysis would be to determine whether the proportion of complaints relating to different categories of rights has changed. For example, the proportion of complaints relating to civil and political rights may have remained steady over the past three years. In the same time period, complaints relating to social, economic and cultural rights and to special group rights may have proportionally increased. If this was shown to be the case it could be argued that the Commission has had a degree of success in promoting different types of human rights and the Commission’s own role in protecting them to the general public. However, there was insufficient data available to draw any firm conclusions on this.

The Commission has been carrying out human rights monitoring and investigation activities ever since the Commission was established in 2000. So far, human rights monitoring activities have already taken place in 58 of the 75 districts of the country, involving 24 human rights monitoring teams dispatched by the Commission with over 90 human rights volunteers participating in such activities. Similarly, the Commission has already held

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65 interaction programs related to monitoring and investigations in various district and regional headquarters in different parts of the country. There were six major human rights capacity building programs carried out by the Commission directed towards local human rights NGOs and organizations. More than 240 people have participated in such interaction programs carried out by the Commission and supported by the Capacity Development Project of the Commission. As a result of the monitoring and investigation activities, the Commission has received approximately 550 complaints of human rights violations by the Government, and 380 complaints of human rights violations by the Maoists were collected during the course of the monitoring and investigation visits throughout the country. The Commission submitted around 200 cases to the Government and its security agencies for further investigation and action while the Commission itself had carried out further investigation on 20 cases it had received in this course. More than 120 security personnel have participated in five major human rights protection related interaction and training programs. Similarly, 18 programs were held that were directly related to the peace initiatives, with the participation of more than 500 people throughout the country. Such activities have included training programs, seminars, workshops and awareness programs.

Types of Complaints Received in the Commission (April 2002 - March 2003)

<table>
<thead>
<tr>
<th>Type</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil and Political Rights</td>
<td>300</td>
</tr>
<tr>
<td>Economic, Social and Cultural Rights</td>
<td>27</td>
</tr>
<tr>
<td>Women’s Rights</td>
<td>29</td>
</tr>
<tr>
<td>Child Rights</td>
<td>4</td>
</tr>
<tr>
<td>Torture and Compensation</td>
<td>85</td>
</tr>
<tr>
<td>Rights related to Services</td>
<td>9</td>
</tr>
<tr>
<td>Others</td>
<td>29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>483</strong></td>
</tr>
</tbody>
</table>
Complaints on the Basis of Gender (2002-2003)

<table>
<thead>
<tr>
<th>Gender</th>
<th>Number of complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>360</td>
</tr>
<tr>
<td>Female</td>
<td>70</td>
</tr>
<tr>
<td>Male and Female</td>
<td>53</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>483</strong></td>
</tr>
</tbody>
</table>

Classification of Accused in Complaints

<table>
<thead>
<tr>
<th>Accused</th>
<th>Total Number of Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>110</td>
</tr>
<tr>
<td>Army</td>
<td>65</td>
</tr>
<tr>
<td>Security Forces</td>
<td>141</td>
</tr>
<tr>
<td>Administration</td>
<td>45</td>
</tr>
<tr>
<td>Maoists</td>
<td>64</td>
</tr>
<tr>
<td>Others</td>
<td>58</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>483</strong></td>
</tr>
</tbody>
</table>

Classification of Complaints Received from the Regions of Nepal

<table>
<thead>
<tr>
<th>Region</th>
<th>Number of Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Eastern</td>
<td>54</td>
</tr>
<tr>
<td>2 Central</td>
<td>229</td>
</tr>
<tr>
<td>3 Western</td>
<td>51</td>
</tr>
<tr>
<td>4 Mid Western</td>
<td>131</td>
</tr>
<tr>
<td>5 Far Western</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>483</strong></td>
</tr>
</tbody>
</table>

As discussed earlier, the National Human Rights Commission of Nepal has been operating in difficult circumstances for some time. Since October 2002, there has been no democratically elected national Government in place and the Maoist insurgency has led to daily human rights abuses by combatants on both sides. In this climate, the most immediate contribution the Commission can make towards protecting human rights is to provide an effective and efficient complaints and investigation mechanism, and speedy disposal of human rights complaints.
Clearly the complaints handling process of the Commission is in an embryonic stage of development. Complaints are still recorded in a hard-copy register and then processed using a hard-copy filing system. Computers and Internet access were made available for each staff member of the complaints handling Protection & Monitoring Division only in mid-2003. There is no standard policy for communicating the progress of complaints until a final decision is reached by the Commission. Also, the length of time that it takes for the Commission to reach a final decision may leave complainants ‘timed out’ for pursuing other avenues of legal redress.

Improving the efficiency of the complaints handling mechanism is highlighted as a matter demanding priority attention in the recent Strategic Plan of the Commission. To address this issue, the Commission has recently developed an electronic and automated complaints system with assistance from the Canadian Human Rights Centre. A complaint-handling manual is also being compiled, drawing on international comparative experiences. Gomez argues that such collaborations between national institutions may also lead to greater strengthening of individual commissions through the ‘cross-fertilization of ideas and jurisprudence that may take place’. 57

The plan to establish regional offices may also improve the overall capacity of the NHRC to efficiently deal with complaints by making the Commission more accessible to the public. However, a decentralised network of the Commission offices should be implemented with caution. Regional staff will have to be carefully trained and given a level of autonomy in dealing with complaints if the Commission is to avoid setting up another layer of bureaucracy and delay.

In addition to its complaints handling function, the Commission is empowered to undertake investigations on its own initiative or on receipt of a complaint. The NHRC has made significant inroads into establishing itself as an independent and credible human rights defender by exercising this power in several instances of alleged human rights abuses arising out of the conflict. In August 2003, the Commission spearheaded an investigation into extra-judicial killings by the Nepalese Army at Doramba in the eastern district of Ramechhap. The Army claimed that the deaths had occurred in the heat of battle. The Commission’s report of the incident, however, found that 19 Maoists rebels had been led to a secluded

area, blindfolded and summarily executed. In its report submitted to the Prime Minister, the Commission concluded that on 17 August 2003 members of RNA, in civilian clothes, executed 21 Maoists and sympathizers who had been in detention, *hors de combat*, for some three hours. The RNA failed to respond to the Commission in the beginning, but later conceded to the findings of the report of the Commission. In October 2003, the Commission did not refrain from holding both the Army and Maoists responsible for the deaths of four students in the far western district of Doti. The Commission found that the Maoists had forcefully entered a school on the premise of staging a cultural program in the school. In the ensuing battle with the Army, students were caught in the crossfire and shot. It is argued that the Commission has had a degree of success in bringing to light gross violations of human rights by both the State and the Maoists through the use of its investigative powers.

This success can be measured by the fact that the findings in these reports have been widely cited by local and global media and the international human rights community. There are other indicators that the Commission’s investigations are having an impact at a national level. The Royal Nepal Army now has to publicly defend its actions, and the proposed creation of a Human Rights Promotion Centre in the Prime Minister’s Office can be seen as an attempt by the Government to undermine the Commission’s growing influence.

The Commission has also used its powers to investigate human rights abuses arising outside the conflict. Recently, the NHRC completed an inquiry in alleged cases of persecution on the grounds of witchcraft. Belief in witches (*Boksi*) still exists throughout Nepal. In many of the complaints registered with the Commission, women had been verbally abused, beaten, and even forced-fed human excreta. In all instances, the Commission found that human rights of women had been violated and that the Government should compensate the women for failing to prevent these abuses from happening.

In the examples given above, the Commission has achieved considerable success in raising awareness about violations of human rights occurring throughout the country. A more important indicator of effectiveness is whether the recommendations contained in the Commission’s reports have

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been implemented or not. So far it appears the Commission is only having limited success. For example, in the *Boksi* cases, the Government has compensated a number of victims’ as recommended by the Commission. However, by not making the offenders contribute to the compensation payment, as recommended, the Government is essentially allowing the perpetrators of human rights abuses to go unpunished.
Chapter - V

Review of Institution, Activities and Capacity Building Efforts

The National Human Rights Commission celebrated its fourth anniversary on 5th of June 2004. For over two of these four years, the Capacity Development Project is working with the Commission to develop and improve its capacity in all major areas of the Commission's responsibilities. At this juncture in the Commission’s history, it seems appropriate to analyse the context in which it has operated, and how it has overcome the challenges that relate to Nepal’s unique human rights situation. By analysing the functions, specific programs and relationships with external parties developed within this context, it is hoped that a picture will emerge of the way in which the NHRC has developed its capacities, and its past and present level of institutionalisation. This will not only provide a record of past events, but will highlight areas in which the Commission is lacking or would benefit from alternative strategies.

There is no doubt that the Commission is working in a very difficult political and security environment. It is greatly enhancing the awareness of intelligentsia regarding the importance of human rights in any peace process. It also continues to strengthen its credibility as an independent statutory body (e.g. by involving a range of volunteers and individuals well-respected in Nepali society). The Commission is ever more aware of the nature of its own role - as well as the opportunities and challenges this presents.

With the support of the Capacity Development Project, the NHRC has already developed its new Strategic Plan 2004 - 2008 engaging in a positive process of developing it involving staff and a number of key stakeholders. The mission statement of the Commission is to develop “a culture of human rights in the country by taking a leading role as an independent and impartial national institution for the protection and promotion of human rights in accordance with universally recognized human rights principles.” The strategic objectives outlined for the next four years is to contribute to the peace building process by ensuring that the Government and the rebels of the Communist Party of Nepal (Maoist) comply with the international standards of human rights and humanitarian law in the armed conflict. Related with it is the objective of promoting, monitoring and enforcing the guarantee of fundamental rights of the people with focus on the right to life, liberty, justice and equality. Then follow the economic, social and cultural rights, rights of women, and other
strategic objectives to be met by the Commission. A detailed five-year work plan in conjunction with the Strategic Plan has also been developed.

Linked to the above developments, the Commission is benefiting from strong political support from the Nepalese people, the United Nations Development Programme in Nepal, the European Commission, and international donors. In this background, the Commission is pursuing several activities, and most of them are supported by the Capacity Development Project, either directly or in other ways. To put the issues in context, at some points, the analysis in the pages ahead also runs into substantive issues of human rights, which clarify where the Commission is in the core matter of principles.

**Commission as an ‘Agent of Peace’**

As stated above, a rapid succession of governments and subsequent political instability since the transition to multiparty democracy in 1990 has resulted in difficulties in maintaining political continuity and momentum for economic and social development and in mobilising and efficiently utilising domestic revenues in Nepal.

The Communist Party of Nepal (Maoist) started a 'People's War' against His Majesty's Government in February 1996, and has enjoyed relative military success as well as political support mainly from groups who have been traditionally marginalized in Nepali society. Shortly after entering into peace negotiations in late 2001, the Maoists unexpectedly withdrew from the talks and launched armed attacks against the Royal Nepal Army. This led the Government to declare a ‘State of Emergency’ from 26 November 2001, which remained in effect till 29 August 2002. During that time, under the Terrorist and Destructive Activities (Control and Punishment) Act (TADA), the police and the army were granted wide-ranging arrest and detention powers.

It is estimated that some 10,000 people have been killed as a result of the war since 1996. There are serious allegations of grave human rights violations attributed to Government security forces, including extrajudicial killings and torture. The Maoists exercise *de facto* control of some of rural Nepal outside the district headquarters, which are still under Government control, and are able to operate in nearly all the 75 districts of Nepal including Kathmandu valley itself. The Maoist insurgents have also committed numerous violations of human rights such as abductions, arbitrary killings, degrading punishments, attacks on civilians and
recruitment of children for military related tasks, to name some of the major violations.

Although the state of emergency ended on August 2002, the TADA which was promulgated as a law in April 2002 is to remain in force for at least two years. Since the imposition of the TADA, the situation of human rights in Nepal has further deteriorated. A considerable number of cases of allegations of human rights violations received at Office of the High Commissioner for Human Rights (OHCHR) have been brought to the attention of the special mechanisms of the Commission on Human Rights, including the thematic Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, Torture, Freedom of Opinion and Expression, on the Independence of Judges and Lawyers, and also to the Working Groups on Arbitrary Detention, and to the Special Rapporteur on Enforced and Involuntary Disappearances. The flow of allegations of human rights abuses continues and is likely to continue as long as TADA remains in force and the conflict goes on. It may be noted that, in its report to the 59th session of the Commission on Human Rights in 2003, the Working Group on Enforced and Involuntary Disappearances mentioned that with 28 recorded cases, Nepal had the highest number of new cases of disappearances reported any country in 2002.

Although not specifically mandated, the Commission has assumed a key role in the peace process. As it believes that the rest of the state apparatus has not been able to move things to create conditions of peace, the human rights situation in the country continues to deteriorate. Following the assassination of the Chief of the Armed Police Force by Maoists in Kathmandu on 26 January 2003, the Commission had a crucial role in seeking a ceasefire between both parties declared on 29 January 2003. It carried out an aggressive campaign to formulate a Code of Conduct during the ceasefire in cooperation with the important stakeholders in Kathmandu. The Code of Conduct and the arguments of the Commission in its favour had tremendous impact in exerting pressure on both the Government and the Maoists to endorse it. Finally, on 13 March 2003, the parties agreed on a 22-point Code of Conduct to govern their actions on the ground. This included some important human rights and humanitarian clauses.

Of the 22 points in the Code, 13 points were taken directly from the draft prepared and distributed by the NHRC in the early stages of negotiations. However, alleged breaches of the Code by both parties were regularly reported, and the Commission continued creating public opinion in favour of a monitoring body acceptable to all. A committee of thirteen members was announced on 9 May 2003 to monitor compliance with the Code of
Conduct. This initiative was to be coordinated by the NHRC. This gave the Commission an extra incentive to work for an exhaustive human rights accord to be signed by both the parties.

While peace talks were going on between the Government and the Maoists in the spring of 2003, the NHRC was negotiating with the parties in conflict on a Human Rights Accord for the implementation during the peace process or in case of return to conflict. In April 2003, the NHRC made a declaration aimed at both His Majesty's Government and the Communist Party of Nepal (Maoist) to develop a Human Rights Accord (HRA) to govern both the warring parties.

On 30 April 2003, the UNDP convened a donors' meeting, which responded positively to the concept of NHRC playing a role in the peace process focusing on human rights, and to the idea of developing an emergency programme to enable the NHRC to carry out its monitoring mandate nationally. At that time, it was also agreed that a “hybrid mission” including the NHRC, the UN and possibly NGOs, was the preferred option at that stage, with monitoring carried out by Nepali monitors of the NHRC with technical assistance from UN advisers.

On 7 May, as the second round of peace talks began, the NHRC presented the parties with a draft HRA with the objective of monitoring violations in a comprehensive manner, and thereby reducing abuses and build confidence between the parties by providing objective and reliable information. Under the proposed HRA, the NHRC was to monitor compliance with the Accord, through the deployment of large numbers of human rights field monitors in five regional offices, with outreach activities in all 75 districts in Nepal. The Accord was presented to both the Government and representatives of the CPN (Maoists) with a request to sign up to it and consolidate the conditions of peace.

However, the Code of Conduct was never seriously implemented due to lack of cooperation of the parties involved. Three rounds of Government-Maoist talks were held on 27 April, 9 May and 17 August 2003. The peace talks finally collapsed on 19 August and the ceasefire ended on 27 August 2003. While the Government blamed the Maoists for the collapse of the talks, the Maoists argued that the Government had failed to deal with the core issues of the conflict, and further cited the massacre at Ramechhap on 17 August as an indication that the Royal Nepal Army was opposed to the peace process. The human rights situation in Nepal has deteriorated drastically since the collapse of the ceasefire, with an increasing number of
grave violations of human rights and humanitarian law being attributed to both parties to the conflict.

The collapse of the peace talks and the return to conflict has made discussions on the HRA difficult, though the need for such an agreement during the conflict or in case of a return to peace talks remains.

Just a few days before the UN Commission on Human Rights, the world's most important rights forum started its 60th session in March 2004 in Geneva. It is in this context that the Government noticed the manoeuvrings of some donors in the country to help move a resolution against Nepal for mounting human rights violations. The intention certainly was not to disrepute Nepal, but to warn it that its fight against the Maoist rebels must be fought within human rights parameters. That led Prime Minister Surya Bahadur Thapa to send his Minister for Foreign Affairs Dr Bhekh Bahadur Thapa and Foreign Secretary Madhu Raman Acharya to visit the Commission, and speak to the Commissioners about the willingness of His Majesty's Government to work with the Commission to sort out problems. They said that the Government had difficulties to sign the Human Rights Accord with the Maoists because of the prevailing policy of the Government, but were ready to declare unilateral commitment on all points that the Commission included in the draft accord. They also handed over, albeit informally, a draft Reaffirmation of Human Rights Commitment of His Majesty's Government based on the draft accord for the additional inputs of the Commission before getting it finalised by the Government. But then the Commission pointed out that a reaffirmation based on previous draft human rights accord might not be enough in the changed context. Apparently the Commission wanted a good faith support from the Commission at the face of challenges at Geneva, which were sure to affect international development support to the Government in the days ahead.

To give strength to the prospect of resolution at Geneva, on 9 March 2004, citing secret detentions, torture, the harassment of civilians and indiscriminate attacks, three United Nations human rights experts said they were deeply concerned by the "deteriorating situation" in Nepal. In a joint statement released in Geneva, the UN Special Rapporteurs urged the Nepalese Government and the Communist Party of Nepal (Maoist) to sign and implement the Human Rights Accord immediately and respect

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international human rights laws and norms. The UN Special Rapporteur on Torture, Theo van Boven, the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, and the Chairperson-Rapporteur of the Working Group on arbitrary detention, Leïla Zerrougui, said the human rights situation in Nepal had worsened since their last public warning in mid-November 2003. Since then, the three rapporteurs are said to have sent 47 urgent appeals to the Government relating to the alleged detention of about 100 people in unknown locations.61

Many reports going out of Nepal referred to an increasing incidence of harassment – including house searches, arrests and detention - of journalists, teachers, lawyers and trade unionists for expressing themselves on the conflict related issues. Moreover, the Special Rapporteurs also added they had received "disturbing reports of impunity of the security forces responsible for human rights violations, which include torture and other forms of ill-treatment of prisoners being held incommunicado. The three experts also said they were "seriously concerned" about indiscriminate attacks against civilians by both sides in the conflict between the Nepalese Government and the CPN (Maoist).

In this background, just five days before the 60th session started, the National Human Rights Commission provided a set of Minimum Immediate Steps for Human Rights Protection to the Government of Nepal based on the main trends it found since its establishment in April 2000. These trends were indicated by the almost two thousand complaints received as well as field monitoring carried out in 58 districts of Nepal since June 2002, and most recently in 38 districts (since January 2004). Based on the number of incidents of human rights violations, the Commission argued that the complaints it received was only a small proportion of the actual human rights violations that had occurred. Of the complaints it had received, over 90 percent were related to the Maoist conflict. These trends included grave challenges to the human rights of the people of Nepal, in particular, the demonstrated impunity of the armed services of the state.

Moreover, the Commission opined that the current defiance of court orders by the state agents was a constitutional crisis which threatened rule of law. Current procedures have proven inadequate for preventing and prosecuting the crimes of torture, rape, murder and disappearances by state agents. Detailed guidance is provided by it for the independent and transparent investigations and prosecutions before the civilian courts which are needed to meet international minimum standards.

61 Ibid.
This includes the demand that persons alleged to have committed these crimes must be suspended from any official duties during the investigation. The Commission has also asked the Government to ensure clear chain of command and control of its armed forces as well as its agents authorised to detain people. It has demanded that superior officers must be held responsible if they know, or should have known, that those under their command are committing these crimes and if they did not take all measures in their power to prevent, suppress or report them to independent investigations. These issues will certainly have some sort of impact on the opinion of those who are critical of what is going on in Nepal.

As a part of the minimum immediate steps for human rights protection, the National Human Rights Commission has also asked the Government to grant the Commission whatever facilities it may require for the performance of its functions. It has claimed a provision of legal action against those who deliberately provide false or misleading information to the Commission.

The Commission has demanded that the Government should ensure the security of the staff or other representatives of NHRC and of such persons as may have provided it with information, testimony or evidence of any kind. It has asked the Government to ensure that any ill treatment, intimidation, threat or reprisal or any other form of interference by anybody with the work of NHRC is subjected to legal action and appropriately punished.

The support of the Government to the Commission is thought to be necessary to ensure an effective system of witness protection with adequate resources to render it effective. The public officials on whom the Commission has to rely should also be required to report violations within their management structure and report to NHRC where no other remedies are available or effective. That means that public officials shall not suffer administrative or other penalties because they have reported that an alleged human rights violation has occurred or is about to occur.

The Commission has very rightly said that it needs an assurance of free movement throughout the country for its representatives without prior notice, including to all places suspected of being places of detention. An assurance that the integrity and inviolability of the Commission offices, premises and vehicles and materials of any kind shall be respected is also important. That also means respect for confidential communications (whether oral or in writing).
With these and many other important calls the Commission has been urging the Government to immediately ensure that all those in the decision-making levels in the armed or security forces are aware of these reaffirmed undertakings and their implications for their behaviour to ensure compliance with human rights, as well as to ensure co-operation with the staff or other representatives of NHRC.

The Government, however, postponed the implementation of the recommendation and issued a unilateral Reaffirmation of Human Rights Commitment and they assured to the Commission of its respect to the Commission’s suggestions before sending the Government’s representative to Geneva. What came out was the statement by Dr Bhekh Bahadur Thapa, the Leader of the Nepalese delegation at the 60th session of the UN Commission on Human Rights, which made no reference to the concerns shown by the Commission. Dr Thapa reiterated that “violence, intimidation, maiming, killing, summary executions, kidnapping and displacement of the thousands of innocent civilians have seriously undermined the efforts of His Majesty’s Government to ensure the enjoyment of human rights by its people.”

He also said that “while the brutal terrorist violence on the part of the so-called Maoists continues, security forces have been utmost cautious and sensitive to protect the human rights of the people.” His point of view was that “the security forces are working hard to generate a sense of confidence and security among the people at large, and to protect the right to life and liberty of the citizens. Barring occasional individual aberrations, the security forces are operating with maximum restraint in their mission to provide security and to win the hearts and minds of the people. While investigations have been initiated against alleged violations, actions have been taken against those found guilty of violations.”

On behalf of the King’s Government, Dr Thapa pronounced some significant steps that he said were underway in Nepal: the reaffirmation of the commitment of the Government to the implementation of international human rights conventions and humanitarian laws; strengthening of the National Human Rights Commission; implementation of the national human rights action plan; effective functioning of human rights cells in the

security agencies; resolute efforts to safeguard human rights and taking action against any violation, and close cooperation with UN Human Rights Commissioner and Special Rapporteurs to safeguard the human rights.

The global war on terror dominated discussion at this year's meeting of the U.N. Human Rights Commission. While innocent civilians, including children, continue to be among the main victims of the conflict in Nepal, the priority of the Government at the meeting was protecting itself from a critical Swiss resolution planned to be moved with the tacit support of Nepal’s important donor countries, which sought to point to the Government’s ineptness in dealing with the growing number of human rights violations. No doubt there is unity in the world that terrorism should be countered, but there is also no controversy on the rule that this should be done while striving to uphold basic principles of human rights. As other countries facing armed conflict, Nepal was also asked to reflect carefully on how it has addressed the protection of human rights in counter-terrorism strategies, as well as to reflect upon the quest for justice for the victims of gross violations of human rights. The speech of Dr Thapa was therefore an incorrect appraisal of the situation for many critiques. The Government is responsible not only for the direct acts of omissions of its own officials but also for any failure to take effective measures to prevent these crimes from being committed by non-state actors, including any members of the Communist Party of Nepal (Maoist).

The active persuasion of the Commission by His Majesty's Government was preceded by the UN Secretary General Kofi Annan's 22 March 2004 statement which urged the Government and Maoist rebels to take “immediate steps” to cease fighting and revive a peace process following a heavy gun battle between the two sides at Beni Bazar in the District of Myagdi. The gun battle again claimed the lives of dozens of militants, and members of security forces. The Secretary General pointed out that he did not believe that there was a military solution to the conflict. He appealed to the Government and the Maoists to take immediate steps to end the fighting and resume the peace process with the participation of all political and civil forces in the country. The Communist Party of Nepal (Maoist) immediately welcomed the UN view to facilitate the peace process, whereas the Government side said it knew its business better. The Home Minister not only ruled out peace process citing the violence at Beni Bazaar, he also expressed the reluctance of his Government to take assistance of the United Nations to mediate peace.

Four days after the UN statement, however, Prime Minister Surya Bahadur Thapa on 26 March 2004 declared His Majesty's Government's human rights commitments, in the presence of NHRC Chairperson Nayan Bahadur Khatri, and described it as the reaffirmation on their implementation, and the implementation of international humanitarian law. The Prime Minister announced a series of measures to curb human rights abuses after criticism from activists at home and abroad. The Government Declaration reflects on the minimum steps submitted by the Commission, although not effectively. The question, however, is whether there is sincere commitment that neither the concerns of security nor the aspirations of liberty would be used to undermine those principles.

The Prime Minister promised that an independent Human Rights Protection Committee shall be constituted to facilitate human rights monitoring and investigations undertaken by the National Human Rights Commission (NHRC), to ensure cooperation with, and for the protection of governmental and non-governmental entities for their human rights related work, and also to help implement the recommendations of the NHRC as well. This Committee will oversee the functioning of relevant Government authorities in the following aspects: investigation into human rights violations and prosecution of those responsible; observance of laws applicable to detention; protection of human rights of all persons coming into contact the security forces; immediate release of those suspected of being under arbitrary or illegal detention; quick implementation of the orders and decisions of the judiciary; taking necessary legal action against those responsible for human rights violations, and recommend compensation for the victims. He also assured that the Government would provide necessary facilitation to the National Human Rights Commission in the discharge of its official mandate for the promotion and protection of human rights.

If it is to be understood correctly, the Government reaffirmed the move from the law of the jungle to the rule of international law, where international human rights and humanitarian law establish clear principles about protecting the human rights of the people including the vulnerable lot of children, women, and senior citizens. Without losing time, in the same evening, the National Human Rights Commission commented that the declaration of the Government has attempted to espouse the principles of human rights and humanitarian law, although it is still unclear about the issues of impartiality in investigations of human rights violations and transparency in legal processes while dealing with the perpetrators of such violations. The Commission also pointed out that it is assured of the Government’s support for the human rights monitoring work to be carried
out with the technical assistance of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

After about two and a half months of the issuance of the Immediate Minimum Steps for Human Rights Protection to His Majesty's Government, the Commission on 27 May finally addressed “The Minimum Immediate Steps for the Communist Party of Nepal (Maoist) to Protect Human Rights”. This included the protection of the rights of non-combatants according to international humanitarian law applicable to insurgency of non-international character. Both sets of recommendations to the Government and the Maoists are based on the main trends found as part of the ongoing work of NHRC since its effective establishment in the summer of 2000.

Now the Commission has expected a similar declaration from the Maoists. The Commission has found trends of abuses being carried out by the armed groups of the Maoists, such as torture (including rape), kidnapping, hostage taking, extortion and killings of non-combatants. In many cases, the violence that they have caused looked random in which the targets were non-military in nature and were not pre-selected. The use of explosives, in areas that are civilian makes this an issue of pressing concern as well as attacks on civilian infrastructure and blockade of essential supplies to the civilian population. The Commission has emphasized frequently that the CPN (Maoist) is bound to abide by Article 3 common to the Geneva Conventions. In other words, persons taking no active part in the hostilities including those who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely. To this end, the Maoists must also immediately stop violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrage upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

Over the last decade, the trend around the world shows the expansion in defining what constitutes a human rights violation, to include acts committed by non-state groups as well as states. It is certainly the case that the distinction between state and non-state armed groups is often meaningless for the Nepalese people suffering in the current armed conflict. These abuses are therefore highly relevant to the NHRC mandate. NHRC has emphasized that armed opposition group like the CPN (Maoist) must also respect the principles of international law derived from
established custom, from the principles of humanity and the dictates of public conscience. For this reason, NHRC believed that it is also important to reaffirm principles governing behaviour of the armed opposition group in Nepal's situation of armed conflict.

On 18 March, the Communist Party of Nepal (Maoist) also declared a clear-cut call to the United Nations to help mediate peace between it and His Majesty's Government. They did not go into the modus operandi as to how the UN should be doing it. But there are understandable factors behind the Maoist call, the most important of which is to get recognition for their so-called "People's War" as the war for democracy, human rights and popular sovereignty. Any involvement of UN means a space for a third party who can offer independent opinion to the parties to the conflict on the peace negotiations. While this can help the Maoist outfit salvage itself from the charges of butchery, violence and destruction, the Government side will be under increasing pressure to enforce international human rights norms in its fight against insurgents, and will be asked to democratise the polity, create an environment for inclusion of the parliamentary parties that have been pushed to the fringes of power, and keep the king under bounds, if not the abolition of monarchy.

Without referring to the call of the Maoists, after four days, the U.N. Secretary-General once again appealed to the Government and the rebel Maoists to stop fighting and talk. In a statement issued by his spokesman, Fred Eckhard, UN Secretary-General Kofi Annan said he was disturbed by the recent escalation of fighting in Nepal, where the continued instability and conflict was having an increasingly devastating impact on the lives of ordinary people. "Civilian casualties and serious human rights violations are a routine occurrence, and the country's economic and social development is being seriously hampered," Eckhard said. "The Secretary-General does not believe there is a military solution to the conflict," the spokesman said. The Secretary-General appealed to the Government of Nepal and the Communist Party of Nepal (Maoist) to take immediate steps to end the fighting and resume the peace process with the participation of all political and civil forces in the country." The Secretary-General is available to help search for a solution in any manner the parties consider useful, Eckhard said. While the Maoists and the political parties have welcomed the statement of the UN Secretary General, the Government does not see any relevance of either the peace process, or of the UN mediation.

The UN involvement in peace process is not new to the world. Every conflict of this scale has international dimensions, and involvement of forces outside the country is a palpable truth. The involvement of UN can
help truth come out, and also guard the process ensuring an all-accepted
democratic solution. However, this is a proposition which both India and
the establishment in Nepal dislike. While the establishment does not want
a force as big as UN to give independent opinion over the issues before
hand, India presumably craves to have this mediating role for itself so that
it can pursue an agenda of its own through something like another 1950
treaty and the Delhi Agreement. The educated Nepalese mass knows very
well how India reached to the conclusion that the democracy in Nepal
cannot serve Indian interests here. An illegitimate establishment with more
arms, ammunitions and fighters could do the job better. Recent events in
Nepal prove it.

The net effect of the call of the Maoists for UN mediation is the arrest of
high-ranking Nepali Maoist rebels in India. By arresting Mohan Baidya,
who is said to be number three among the rebels', India has clearly
demonstrated its intention that while it is prepared to allow the rebels to do
anything, including waging the bloody war to replace the country's
monarchy, it will not allow them to call the United Nations, and expose
interests associated with Maoist movement. It will also not allow the
Maoists to reach to a position of power in Nepal setting a bad example for
the revolutionary groups working in its own territory. The people of Nepal
recall how two more rebel leaders, Matrika Prasad Yadav, a Maoist
politburo member, and Suresh Ale Magar, a regional leader, were arrested
by India in Indian territory, and handed over to Nepal in February, because
the Maoists did the mistake of declaring Yadav the chief of Government of
the so called Madheshi autonomous region. India does not want
autonomous governments in Nepal, which may arouse the sentiments of
many similar groups in India. Another Maoist leader CP Gajurel was
arrested because he was suspected to have planned a direct dealing with
the King while he was in London. This continues to give more fuel to the
critiques who charge India for many ills that Nepal has been made to
suffer. Although political, these issues will continue to have impact on the
human rights situation in Nepal.

Unlike the propaganda created and nourished by Foreign Minister Bhekh
Bahadur Thapa and other members of the present Government, and the
Indian press, the United Nations has responsibility for the general
enforcement of human rights law. The UN is bound to promote and
encourage respect for human rights under Articles 1(3) and 55 of its
Charter, and member states are required to take relevant action in this
regard. It is not only through the UN Commission on Human Rights and
the Human Rights Committee under International Covenant on Civil and
Political Rights (ICCPR). The role of the UN Commission on Human
Rights in undertaking investigations into the human rights situation in
selected states, particularly through the appointment of special rapporteurs, a process which has been applied to states undergoing internal armed conflict.

In conflict situations, the UN has been accepted in a variety of ways. The methodology for such an involvement can be sorted out through mutual agreement. Although no long-term resolution of the conflict has been achieved, these events reveal a broad regard for the Commission as an ‘agent of peace’. Using its unique status as a semi-governmental authority, the Commission has emerged as a neutral ‘fourth voice’ among the competing claims of the Government, political parties and the Maoists.

**Problems of Human Rights Monitoring**

The job of human rights monitoring is one of the most essential functions of the Commission. Until May 2002, there was not much conceptual clarity in its monitoring mandate, and not much was done in this regard. Moves towards a systematic approach to human rights monitoring was started from June 2002, and some achievements were already made by February 2003.

As the Commission was not confident in the beginning, its Commissioners carefully started building relations with the national and international organisations working in Nepal such as International Committee of Red Cross (ICRC), the United Nations Development Programme (UNDP), some other international human rights organisations like the Amnesty International, and local human rights oriented bodies like Nepal Bar Association, the Federation of Nepalese Journalists, and reputed Nepalese human rights advocates and individuals. These relations encouraged the Commission to proceed with human rights monitoring works. After June 2002, the Commission also started capacity development works in human rights monitoring.

The first draft of the human rights monitoring regulations and a comprehensive monitoring manual are ready and the Commission is expecting to adopt it by the end of the year. A number of policy decisions need to be taken before putting them in force. They not only set the procedures, but also aim at providing complete guidance to the decision makers and the monitors on monitoring and reporting works. The processes that are being adopted now as the first steps involves the identification of districts for monitoring, selection of human rights volunteers, a two-day training of the volunteers to be employed for this purpose, a one-day security and logistic briefing to the team, and necessary departure procedures. This is a planning phase. As the second step, the
monitoring team, mostly led by a trained Commission official, is asked to contact Chief District Officers, the District Administration Offices and district level security forces, non-governmental organizations, local offices of the political parties and others. That is followed by individual meetings with civil and security officials, representatives of non-governmental organizations and with other respected persons of civil society in the district level.

With this general scanning done, the team finds local facilitators to guide it to move around and to go to interior parts (away from the district headquarters). With the help of facilitators, the process of collection of facts starts. The team itself takes the responsibility of managing the monitoring issues, and saving of information thereby collected.

The report is submitted to the Commission upon the return from the districts within a reasonable period. But debriefing is done to the Commissioners and senior officers as soon as they return, which gives the Commission time to take appropriate decision as interim orders, or whatever is the appropriate course. At this stage, the Commission may make public the trend of human rights violations, call the responsible governmental officials at the Commission to discuss with them, ask them to be accountable to the concerned human rights violations, lobby at various level of society, and present the issues to the stakeholders if necessary. In any case, after the review of the reports, cases are selected and referred to the concerned governmental agencies for further action. The Commission regularly follows on cases submitted to these agencies, and in appropriate cases, victims are advised about the progress made. Cases in which the Maoists are involved as the human rights abusers are also recorded and sent to them; public statements are issued to show the trend and alert the Maoist leaders and cadres. The Commission keeps publishing summary reports on such trends. The Promotion Division also conducts media campaign on the findings of such reports creating pressure on the human rights violators to abide by the human rights and humanitarian norms. There is positive response from civil society, political parties and the international community on the finding of the Commission, although at times, certain sections of the security forces, cabinet members, and Maoists have been negative.

The monitoring teams of the Commission or those on fact-finding missions face many challenges while they are in the field. Some of the challenges
and obstacles deserve mention here. Despite repeated emphasis, lack of conceptual clarity is a common problem among those selected to go for monitoring. Willing and qualified volunteers are difficult to find. In a society, which has developed so much of partisanship in its key policies, finding people who can remain independent is also difficult. There is also the problem of access to remote areas. In situations where there are urgencies, a proper level of planning has always been difficult. Similarly, the teams are forwarded on missions with a fixed timeframe, and in many a situation, they find establishing rapport with the local people or institutions difficult and thus time consuming. Concerns have always been expressed on the safe return of the team members. There are no security arrangements at present. So far, except for a volunteer who was arrested by the security forces on the suspicion of being a Maoist, the Commission has not faced such a problem. Although attempts are being made to send these teams with satellite telephones and radios, they are not enough as insurance against all threats and vulnerabilities. The Commission is working with the UNDP on how to ensure security arrangements in the job of expanded monitoring.

The job of monitoring is not possible in many cases without an efficient cooperation with the local human rights groups and other civil society entities. They are needed to guide the Commission about the local situation, customs, topography, and various social cultural factors that are important. They also help get the proper people, identify the perpetrators, take statements, collect evidence, and crosscheck through different sources. While the capacity of those who go through the Commission, or the staff of the Commission bearing responsibility for these charges are certainly being developed, those who cooperate with them locally are not as capable. In addition to giving training on human rights investigation and monitoring, the Commission also needs to further speed up building the capacity of human rights organizations, NGOs, civil society, media and other social welfare organizations working to reduce the impact of the current conflict situation at the district level. The Commission is already working in this area, although the task is gigantic.

As one can expect, there is a lack of a local mechanism to maintain regular and evidentiary database on all actual human rights incidents at the districts. Although the Commission is already planning on this issue, this situation has lead to increase in the perpetrators not being punished for their crimes and no follow up of these cases. In order to solve this

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64 The author has benefited in this part of the research from the discussions that he had with NHRC investigation and monitoring staff Hari Phuyal, Madhav Prasad Gautam and volunteers Bamdeb Gyawali and others in March 2004
problem, the Commission should keep in mind that with its large-scale promotion of the mandate of the National Human Rights Commission and its responsibility and the powers, the Commission must be able to develop and disseminate simple and easy to understand educational, informative and training materials on human rights, international humanitarian law, domestic laws on human rights and international conventions that Nepal is a state party to. It should also focus on raising awareness on social, economic, political and cultural rights; the National Human Rights Commission Act and on the formation of the Commission; and the work that the Commission can do and should do to protect and promote human rights.

The monitoring team should be made more trustworthy, dependable and responsible. In this regard, the Commission must pay attention towards the right selection and identification of the volunteers who form the monitoring team. The volunteers should be given basic training and orientation on the subject being monitored. The monitoring report and the importance of this report have to be clarified. In line with the current situation, the work, activities and incidents of the local human rights activists and their public statements and reports should be monitored. The employees of the local human rights organizations should be given training on investigation, fact finding and reporting writing.

Training for representatives of the human rights organizations, NGOs, media and civil society is very crucial. While providing training, the Commission has to keep in mind the following and maintain these abovementioned standards. In light of the current situation, it is necessary to create responsibility amongst the human rights organization by highlighting the importance of the local level human rights bodies, educate the local activists and organizations on carrying out their activities on equal and independent grounds. Attempts towards motivation of human rights activists should continue. In order to support the human rights sector, a time bound plan for proper human resource development and identification of new programme areas must be made.

While the Commission has already started implementing its regionalisation plan, the local monitoring mechanism should also be developed. It is not possible to go to distant villages to monitor human rights violations from the head office. It cannot be ignored that the lack of reliable local resources makes collection of actual facts a difficult process. Keeping in mind these two obstacles, local activities should be developed that will enable the Commission to make use of this mechanism with ease while conducting investigations. This process may be facilitated by locally
organised human rights essay writing competitions, poetry competitions along with question and answer sessions on human rights by conducting it locally at the high school level. Awareness programs should be conducted for various groups and clubs like the mothers group, consumers group, farmers group and mediators groups, and clubs etc. Taking human rights activities to the guardians, teachers, intellectuals and social workers and identifying resource persons for the above activities, persons who are active in the field and show interest in the field of human rights also helps. The Commission has to think towards training this group of identified resource persons and making them active.

These abovementioned reforms will enable to make the local monitoring mechanism sustainable. In order to create this atmosphere and environment, the Commission has to send a facilitator and a trainer to the district level. In districts and regions where there is already a favourable environment towards the local monitoring supports and the process has already begun, the Commission should create necessary focal points among local activists and senior citizens with the support of the concerned regional office.

Prior to the formation of the National Human Right Commission in 2000, many non-government organizations have been active in the field of promoting human rights. Some of these are relatively able organizations like Informal Sector Service Centre (INSEC), Human Rights Organisation of Nepal (HURON), Human Rights and Peace Society Nepal (HURPES), and the Human Rights Protection Forum, but then there are others, local as well as national NGOs, with different level of priorities and public appreciation. In the complex cluster of organizations, there is sometimes a tendency to view the Commission along with these organizations. Many a times there is a misconception that the Commission is also one of these NGOs, and its activities are limited to human rights promotion and criticism of the Government, and is largely politically biased or prejudiced, the way some other human rights organisations are. This has made the activities of the Commission difficult in several situations. As a result of such a misconception, it has at times resulted in negative impact when dealing with the security forces. It has been suggested by many human rights monitors of the Commission that the security forces at the district or regional level were of the view that most human rights activists and organizations do not maintain independence. They also thought that there is no marked difference between these NGOs and the National Human Rights Commission. Although the judicial administration and local Government units seem quite supportive, some segments of civil administration do entertain such feelings regardless of any objective basis.
This has led to mistrust, and the Commission in most of the cases feels compelled to balance its approach at all times.

**Actions and Determination of Compensation**

The Commission enacted the Complaints, Actions and Determination of Compensation Rules with the authority vested in it by Article 23 of the Human Rights Commission Act 1997. According to the Rules, the victim in person or any other person on his/her behalf can register the complaint in the Commission. The complaint can be submitted in person in writing, or sent through the post or courier services, wire (telegraph, fax, telex) or any other means of communication that can be archived later. There is also a provision for oral complaint information from the complaining person present, or received through telephone, which needs to be formalized. No charges are to be paid for the complaint to be submitted under these Rules.

After registration of the complaints, the preliminary action taken is the submission of the complaint by the Secretary within seven days to the Commissioner authorized by the Commission for preliminary action. If the complaint is registered as “most urgent”, such complaints should be submitted within 24 hours. For the purpose of these Rules, if the complaints of human rights violations of the following nature are received, such complaints shall be regarded and registered as “most urgent”: if it is concerned with the death of a person or a possibility of a death of a person; severe torture; serious injury; or when a group or a community as a whole is the victim. For the study of complaints received as per the process, if it appears at first glance that the human rights of the victim has been or is about to be violated, an order should be issued within seven days with the necessary details to the institution or officer or whose action is responsible for the violation of the human rights of the victim.

After the study of the complaints received, if it appears that the complaints are of the nature which cannot be entertained, the concerned Commissioner of the Commission can issue orders for the suspension or cancellation of such complaints. They include complaints with no mention of the complainant or the victim; if the complaint appears to be unclear or imaginary; if the complaint is not related to human rights violations; if the subject of the complaint is outside the scope of the human rights as per Article 10 of the Act; if the complaint appears to be false and without any

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65 Article 23 states: “The Commission may, in order to carry out the objectives of this Act, frame necessary rules. While doing so, the Commission may consult His Majesty’s Government. Provided that in making rules relating to remuneration and facilities, His Majesty’s Government shall be required to be consulted.”
prima facie factual basis; if the complaint does not fulfil the requirements as per Rule (3), which refers to the details regarding the process of submitting the complaints.

This is followed by the process for investigation, research and inquiry on complaints. After receiving the requested details, or after the end of the deadline for submitting the details, to decide on conducting investigation, research and inquiry on the case, the concerned Commissioner of the Commission has to submit all documents for such activities to the Commission. If the Commission finds it appropriate to conduct its inquiry and investigation, it can appoint any Commissioner or an officer of the Commission for such purposes. If the Commission does not find it necessary to conduct its own investigation and inquiry, it can require the Government to conduct the inquiry and investigation through the concerned institution or official. It can also constitute committees or sub-committees for this purpose. An investigation committee established as per this rule may include when necessary, the Commissioner, Secretary or an official from the Commission, along with specialists related in the field and police officers, legal experts, government lawyers, journalists, academicians, and human rights activists. The appointed Commissioner, official, institution or person, or the investigating committee has to conduct its investigations and inquiries with the authority vested in the Commission as per these Rules and the Human Rights Act. The appointed Commissioner, officer, person or investigation committee should submit a report with the final decision to the Commission within thirty days after starting its investigation. In cases when the investigation and inquiry is of a serious nature and requires more time, the appointed Commissioner, official, person or committee may request the Commission for more time and the Commission can add a maximum of three months for the completion of the investigation or inquiry.

This is followed by the process of sending note for action on reports. A copy of the report on the inquiry and investigation received by the Commission, along with a note of action should be sent to a responsible official capable of taking necessary departmental action on the department, official or person who is the alleged violator of human rights. After receiving the copy of the report of the investigation and the note for action, the responsible official capable of taking necessary departmental action on the department, official or person should send a note to the Commission if the officer has any comments to make on the report. Among other things, such a note should explain the following: (a) full or partial acceptance or rejection of the report including its decision; (b) whether any action has been taken with regards to the case or should any action be taken on the
case; (c) reasons and grounds for wholly or partially rejecting the report; (d) details of any acts of remorse, sadness or apologies with regards to the case. The Secretary should present the details to the Commission if any notes on the investigation report as per these Rules have been received or have not been received by the deadline.

The Rules also enables the Commission to utilizing the services of specialists. The Commission can utilize their services if it feels the need of such persons to conduct investigations or their expert opinions on investigations undertaken. Upon the request of any institution for the expertise of specialists of the Commission, the Commission may decide to provide such expertise and specialists.

After receiving the complaints submitted to the Commission the Commission may seek additional evidence if necessary. It can ask people to come to its office and seek information from them, question witnesses, prepare the statement of witnesses, ask to present original documents or copies of documents to the Commission, conduct field investigations, present direct evidence and other evidence as per the model, and allow for seven days of time apart from the period of journey. After receiving the requested details, or after receiving the reports, the Commission can conduct a public hearing of the case if it considers it relevant. If the Commission decides to conduct a public hearing, then it shall set the date, time and place and inform the details to the complaining person, the victim and family members of the victim and the concerned institution, official or involved in the violations or who has shown negligence in the protection of human rights. The public hearing has to take place in the presence of at least one Commissioner of the Commission. During the public hearing, the related parties and the legal professionals as well as representatives of human rights institutions permitted by the Commission to be present in the hearing, and journalists may present their views and take part in deliberations during the hearing as well. As per these Rules, if the Commission seeks written submission or if the legal professionals from the concerned parties seek to submit their submissions, the Commission may accept such submissions.

Irrespective of whatever written elsewhere in these Rules, the Commission can facilitate compromise between the concerned parties if the concerned parties submit a joint application for compromise to the Commission while the complaint is being considered by the Commission, or if such a compromise can provide assistance to the victim while the complaint is being considered by the Commission, or if such a compromise can protect
and strengthen human rights in any way. In the event of such a compromise, action on the complaint shall be considered completed.

With regards to the complaints received by the Commission, it shall decide on whether there have been human rights violations and whether human rights have been discouraged, or whether there has been negligence in preventing violations based on the subsequent inquiry, investigation, evidence, reports and public hearing on the case. In the case when an institution or a public or government official has been found guilty, the Commission has to write to the concerned institution or official for necessary action. If any institution or public or government official has been proven to have been involved in the violation of human rights or discouraging such rights, or has shown negligence in preventing violations, and if the Commission finds it necessary to compensate the victims in such cases, the Commission shall issue an order for compensation in such cases. With regards to the compensation, the Commission shall also set the amount for compensation for the victim. Regarding the action against the wrongdoer or regarding compensation, the Secretary has to write and send a copy of the decision to the concerned institution or official.

The process for implementation for the order is also stated in the Rules. Regarding the order sent to the concerned institution or official for action on the wrongdoer, the concerned institution or official should send a report to the Commission informing the Commission on action to be taken or explanation for not taking any action within three months after receiving such an order from the Commission. The concerned institution or official should obtain and provide the compensation when ordered by the Commission for the payment of the compensation to the victim. In the event of a compromise, if any of the concerned party has yet to fulfil certain terms of that were agreed upon, it should fulfil such terms within the time limit fixed by the deed of compromise and should immediately inform the Commission. If the party responsible for fulfilling the term or fails to do so, the Commission should continue the process of investigation, inquiry and research and proceed further in taking actions according to the provisions of these Rules.

The Commission can itself start taking action. Irrespective of whatever written elsewhere in these Rules, if the Commission receives any type of information regarding some official body, public or government officials having acted according to Clause (2), Section (a), Sub-Section (1) or (2) of Article 9 of the Act, the Commission itself can investigate, research and make inquiries in accordance to these Rules.
The basis on which the compensation is determined is also stated in the Rules. In case of the Commission’s decision to give compensation to the victim in accordance to the provision of Rule 13, Sub-Rule (4), the amount of compensation should be determined on the basis of the provision of this Chapter. If somebody dies due to the violation of human rights, besides other factors, the amount of compensation should be between one hundred thousand Nepalese Rupees to three hundred thousand Rupees on the basis of the following: (a) the age and the earning capacity of the deceased; the number of dependent family members of the deceased and the minimum amount of expenses for their livelihood; (c) the number of infant children of the deceased and the expenses for their upbringing and educational expenses up to class 10; (d) the age of the spouse of the deceased, physical condition and the means of livelihood.; (e) whether the victim was physically or mentally tortured before death; (f) medical expenses before the death of the victim due to the violation of human rights, and (g) the expenses for cremation and mourning rituals.

In case of torture due to human rights violation, compensation of up to one hundred thousand Nepalese Rupees should be determined on the basis of the following: (a) the degree of physical and mental state of the victim and its severity; (b) physical and mental damage and the loss of earning capacity of the victim due to such damage; (c) if the physical and mental damage is beyond medical treatment and the victim is unable to enter any profession or work, the age of the victim, his means of livelihood and family responsibility; (d) if the damage can be treated, expenses for the medical treatment or the estimated expenses for future treatment; and (e) on the type of damage that can be medically treated, the time required for such treatment. In case of a condition which cannot be regarded as torture under the existing law, such case shall not be regarded as torture under these rules and on this ground, no compensation is to be awarded.

The basis for determination of compensation in case of illegal detention is also separate. In case of the violation of human rights of a person under illegal detention, a compensation of one hundred to two hundred Nepalese Rupees for each day of the detention should be determined on the following basis: (a) the condition while in detention; (b) treatment towards the victim during illegal detention; (c) period under illegal detention; (d) the physical or mental pain naturally occurring on the victim while under illegal detention, and (e) the definite economic loss of the victim while under illegal detention.
If someone is bodily injured, disabled or sexually abused, compensation of up to one hundred thousand Rupees should be determined on the following basis: (a) seriousness of the injuries inflicted on the victim; (b) seriousness of the case if the victim is disabled; (c) in case of sexual abuse, its degree and seriousness; in case of medical treatment of body injuries or if the person has been maimed or disabled, the expenses incurred on the medical treatment for such injuries and disabilities and (e) in case of body injury or if any part of the body is useless due to disability or in the possibility of such a condition, the time limit for the same.

 Discrimination on the ground of caste, ethnicity, religion, colour, sex, political faith or any one of them, except in cases which according to law require the person under certain designation to have necessary physical or mental aptitude and in cases requiring special physical attributes, and the refusal to provide employment on the basis of physical attributes shall be considered violation of human rights and a compensation of up to one hundred thousand Rupees may be determined on the following basis: (a) condition and nature of the discrimination; (b) the mental pain and inferiority felt by the person due to the discrimination; (c) in case of discrimination, the estimated earnings from the job if the victim had been given employment; (d) in case of social and cultural discrimination, the impact and consequences of such discrimination in the society, and (e) in case of discrimination due to religious or political beliefs, the impact and consequences of such discrimination on the civil society.

 The compensation amount as determined under the Rules should be distributed to the victim within three months after receiving the written notice of the Commission. If the victim is already deceased or is mentally unstable, then the compensation should be given in the following order: to the spouse, parents, children, brothers, sisters, and grandchildren respectively. In the case when the compensation determined is to be given by any public or government officer, then the office in which the officer is working should bear the compensation amount. Irrespective of whatever written elsewhere in these Rules, if the Commission decides that the public or government official him/herself should pay the compensation amount, then the Commission shall order that the amount be paid in full or partially from the remuneration of the official or from any other sources of the official.

 With regards to compensation to victims of human rights violations as per these Rules, if there are other means of receiving compensation in other prevailing laws, then these Rules shall no longer determine the compensation of victims of human rights violations.
No case can be undertaken in court based on the subject of the depositions or statements taken from people during the process of complaint, action and inquiry as per these Rules. Irrespective of whatever may be written in the prevailing laws, in cases of criminal offence there shall be no obstruction to process cases in court by the Commission’s actions or inquiry as per these Rules. Irrespective of whatever may be written in the prevailing laws, in case when no decision can be made on the complaint submitted to the Commission as per these Rules, only in such cases there shall be no punishment or fines levied on the complaining person. Complaints as per these Rules may be submitted to branch offices of the Commission and other offices designated by the Commission for its work. The Commission can also implement its duties through its outreach offices as per these Rules. The order issued or decision made by the Commission shall be verified by the Secretary or a concerned officer appointed by the Secretary. The Commission after two years from the date of the final action taken on the complaint shall expunge complaint letters, replies, and other documents. However, the orders issued by the Commission and the complaint registration book shall not be expunged.

In the event when the Commission feels that any immediate action on the complaint submitted as per these Rules may provide some assistance to the victim, the Commission can issue orders to any institution, public or government officer to do or not to do any such particular action. The Commission should create necessary directives for the fulfilment of the objectives of these Rules. Complaints and applications received by the Commission after its establishment and action taken by the Commission on such applications and complaints, along with actions taken by the Commission on its own is to be considered to have been undertaken as per these Rules.

**Procedural Reform**

There are some additional complaint handling issues to be taken into consideration with reference to facilitating the functioning of the Protection and Monitoring Division of the Commission. The Commission needs to establish a “hot line” system open 24 hours in the Commission thereby developing a mechanism for receiving complaints at all hours and make a tangible contribution towards the protection and promotion of human rights. A clarification is also needed to explain how to prioritise and take action upon complaint applications received in the forms of CC/ Information/ Attention or press release.
The officials at the Protection and Promotion Division are of the opinion that a minimum and maximum time limit should be set and followed in each and every step leading to the final decision on the complaints received. The issues to be considered are: the time for making decisions on the type of complaints which can be annulled or rejected at first glance; time for finalizing the prioritised cases; time for receiving replies at the first stage; time for investigations (while investigating- conditions for transportation; geographical distance; whether the procedure as fixed by the Acts and Laws have been completed, and allotting time taking into consideration the gravity of the subject matter); time needed for the final decision by the Commission after the completion of investigations; time to finalize the cases/ complaints with complete information (3 days or more); time for writing the final decision; time to inform the plaintiff; and time for the implementation of the final decision, etc.

It is always crucial for decision making whether to be satisfied with the replies received from His Majesty’s Government on complaints of sensitive nature and to take decision on the basis of such replies, or to finalize the case after separate independent investigation. The Commission should decide with due consideration of its means and resources as well as the time factor and then make the final decision accordingly. As per the provisions in the Rules of the Commission, which authorizes it for amicable settlement (by way of compromise) between parties, the procedure on how to make such amicable settlements should be decided. The Commission should decide the model of the documents for their validity in the process of investigation.

The reason for the delay in the implementation of the work of the Protection and Monitoring Division has been due to not receiving the replies to the letters sent by the Commission on time. Therefore, if no reply is received after the second and third reminders, a letter specifying the action in accordance to the Human Rights Commission Act 1997 has to be sent and if even after doing so, if no reply is received, the Commission should step up its action with the recommendation for departmental action.

A mechanism to step up proportionate action in handling both old and new cases needs to be developed. A separate diary for the re-activated cases and for taking action on time should also be prepared. Copies to those concerned who request for the same should be issued; charges should be set and the issuing of receipts should be arranged.

The investigator will gather information on the case by correspondence with the respondent, and if necessary, through site visits as well. The
The individual commissioners clearly enjoy a respect and authority that does not seem to attach to the Commission staff in the same way. However, a common criticism of the Commission has been that frequently it has not properly investigated complaints, but simply passed them onto the relevant government department.

In the resolution of cases, the Division can also resort to amicable settlement, but several norms need to be developed for this purpose. It is due to the lack of these norms that this power is rarely used. The Commission should see its role as problem solving rather than taking a legalistic approach. Aside from the culture of mediation that tends to prevail in other national human rights institutions, there is also a practical problem with the shortage of lawyers at the Commission. However, the tendency towards mediation has its dangers without clear-cut provisions.

The practice in the Commission is that the entire file on the case is not made available to the respondents. This is because the file is regarded as confidential for the protection of the complainant. But again, specific procedures are needed in this regard.

There is no separate mechanism for following up whether a particular recommendation has been complied with. It is assumed that the complainant will come back to the Commission if the respondent has not complied.

Nothing bars the Commission to bring any action before any court to enforce its recommendation. In practice, this power is not used even sparingly. It has been a matter of debate in the Commission whether the court's role is to hear the case in its entirety or merely to register the Commission's decision and give it the force of an order of the court.

The competence of the Commission basically extends to the state authorities. It is not clear if it also includes the judiciary as well. So far, the Commission has not passed any instruction to the courts, or their benches. An analysis of the type of cases handled show a small portion comprising of human rights matters as conventionally understood. A substantial portion of the cases involves complaints against private parties. On the private matters that are not either human rights violations or maladministration, the complaints receiving officer will give advice or refer a complaint to another agency. The Commission has it in its power to recommend that a criminal prosecution be launched against an official who
has committed a human rights violation that is an offence under the law of Nepal. It has not been however a party to the proceedings in courts.

Recently, the Commission has developed a standard classification of human rights violations to ensure consistency in the approach adopted by its investigations. However, NGOs criticize the Commission's failure to classify human rights violations adequately in its recommendations.

The wide variety of cases handled by the Commission has led to a need for greater specialization among its staff - although high turnover and staff shortage have not so far made this possible. While at the regional level, specialization would be neither possible nor desirable, and in the headquarters, it is probably inevitable and will certainly make for a higher quality of investigation.

The Human Rights Commission Act explicitly gives the Commission the authority to conduct an investigation without receiving a complaint. This power has not yet been effectively used in the best interest of the vulnerable, marginalized or deprived people of Nepal. There is a good scope for it, and the Commission has already gained the image that it needs to drive into these challenges.

The Commission is also prepared to accept complaints from a third party, for example, by a teacher on behalf of a child, or by the press on behalf of a prisoner. But the general people are not aware about it.

**Reforming the Complaints Management System**

The complaint handling function of a human rights commission is arguably its most important and valuable activity. A complaint process that is not understandable, accessible, speedy, effective or fair is not only seriously damaging to a commission's credibility, but also impedes its ability to bring about positive changes to the prevailing human rights situation. A study pursued in 2001 on the complaint management system at the Commission showed that there is a scope for improvement on the model that NHRC Nepal has adopted for itself. The above figures on the settlements of human rights complaints also show that the NHRC machinery needs to be activated, and part of the solution to the existing problems of delay and arrears is a well-developed complaint management system which is not only understandable and accessible but also speedy, effective and fair. The existing environment of Maoist conflict further
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indicates towards the urgency of an effective complaint settlement mechanism.

There is no one accepted way of handling complaints. Similar commissions around the world have adopted differing approaches based on the nature of the cases it deals with, the traditions (legal and otherwise) that form part of the backdrop to its existence, the organizational structure it adopts, the capacities of the personnel and the emphasis it places on the various, sometimes conflicting objectives the complaint process is meant to respond to. It is also true that most commissions have adopted a process that facilitates and demystifies complaint filing and investigation, tries to eliminate unnecessary bureaucracy, cost and duplication of efforts, seeks to devolve administrative decision-making to the lowest possible level, attempts to accentuate quick and amicable resolution, searches for comprehensive remedies that aim both at restoration and prevention, sets the standard of proof at an appropriate level given the powers it possess, and thus affords both sides to a complaint the opportunity to present their case and tries to minimize the possibility of administering abuse or error.

After an initial experience for a couple of years, the Commission has finally adopted an automated complaint handling system compatible to its operating procedures and to meet its actual needs. To develop such a system, the Commission staff and advisers were involved in early 2004 in developing specifications for the system. The challenges faced by the Commission in its current method of handling of complaints were: identification of multiple complaints; limited and unstructured recording of details; inadequate information on the history of the directions passed by the Commission on complaints; unscientific classification of incidents with no clear cut categorization of complaints; limited provision to record the compliance (compensation, prosecution, and disciplinary action) cases, thereby resulting in poor quality of records and their follow up; increased complaint processing time, and ad-hoc entries and validation of data. It was difficult at the Commission to record and track all the movement of complaints in the process. It was also difficult to monitor whether action was taken quickly by any specific authority on a complaint. There was no comprehensive query-based system for effective complaint management. As the system was based on manual file handling, it could not effectively gather complete information about victim and complainant. Besides, it lacked ordered and controlled entry of basic, follow up directions.

An automated complaint handling system that the Commission wanted was to respond to all these problems. The system employed at the Indian Human Rights Commission was said to be a very efficient one, which Nepal could make use of with necessary modifications.
The Capacity Development Project, which had a provision for development of effective and efficient complaint and monitoring processes for the Commission, jointly initiated with the Canadian Human Rights Commission, has now already installed a modified automated complaint handling system at the Commission after necessary modification of the system at work in the Indian Human Rights Commission with their technical support. The objective was, first, to adapt their software in line with the Commission's complaint handling process to meet its basic needs and, second, to adapt their software to meet the needs of Nepal's Commission as defined more fully by an internal user group. Both phases involved installation and testing of the system, as well as user training.

This system, which is said to be based on simple and easy-to-use data entry forms, is meant to enhance the effectiveness and efficiency of the existing complaint management system by adopting a systematic and uniform approach to complaint handling. While this system can improve these existing shortcomings, it can also store the identity of the officer gathering the information of a complainant. It has the provision for recording the Commission's direction at the time of its initiation. It can also produce series of authorization checks and validations to improve the quality of data. Under this system, accountability by provision of storing the user identity for every transaction can also be entered. It can also generate multiple copies of notice and action reports after the Nepalese Commission is prepared for it. This also may ensure automatic generation of reminders, summons, statements of non-reported cases, etc.

**Regionalisation Plan and Accessibility Issues**

Although a small country with unitary state nature, Nepal is a difficult place for regionalization and accessibility.

Due to difficult topographical and physiognomic factors, especially the mountains and rivers, even the administrative structures of the Government do not exist everywhere. Transportation, public or private, is a major problem in a country which has only 13,223 kilometres of dependable roads. A poor communications infrastructure means it is difficult even for the public to reach a regional office - let alone headquarters in Lalitpur. What exists everywhere is a political structure - the local self-government units like Village Development Committees or District Development Committees (which remain clogged due to the inability of the government to hold elections in time) - with which the Commission is yet to develop some sort of relationship to reach to the local people, and to depend on them to channel complaints to the regional
office, or the headquarters. Another issue raised by the development of regional offices is the level at which complaints are settled locally.

The National Human Rights Commission of Nepal, as many other national institutions in the developing world, lacks the resources or know-how to establish a presence throughout the country. But then it is usually in the nature of human rights violations that they are perpetrated on the weakest and most vulnerable sections of the society - usually those who are least able to avail themselves of conventional legal assistance. This may be because they are geographically remote or they are isolated in some other way. Regional (branch) offices are needed to create a real presence of the Commission on the ground. As such, with the support of the European Commission, the Commission has started a process of establishing regional offices. A large part of the challenge thus is to make the Commission accessible to those who are vulnerable to violation of their rights by making the regional offices geographically accessible.

The main objective of the outreach project is to enhance the capacity of NHRC to adequately respond to its multifarious tasks, which is also an integral part of the portion of the Strategic Plan of the Commission, which has been provided for by the outreach program. As an extension of the Commission, the outreach programme will not only deal with the regular activities of the Commission, it will also be primarily required to monitor the human rights aspects of the current conflict and in the post-conflict situation as well. The main elements of the programme will at the same time strengthen the NHRC by increasing the capacity to receive and process complaints and enhance its capacity to carry out advocacy programs designed to protect and promote human rights. The most significant element of the programme will be to set up, in a phased manner, five regional offices of the NHRC throughout the country which will be entrusted with outreach work to raise awareness of human rights and mechanisms for remedy, in particular the role of human rights in the current conflict and the monitoring role of the NHRC as per its Strategic Plan.

The creation of this nationwide structure will significantly enhance human rights promotion and protection role of the NHRC. It will, therefore, greatly increase its ability to play a practical role in defending human rights during the present crisis, notably by creating local mechanisms for dialogue and by enforcement of the rule of law. At the regional level, the offices will design working methods to allow it to have an impact throughout all of the districts in the area. This will depend on an effective strategy of working with and through existing formal and informal structures present in the field.
The regional offices will play a pivotal role for implementation of Human Rights Accord, the signing of which by the parties to the conflict (the State and the Maoists) is being rigorously promoted by the NHRC and the international community. The Regional Offices will house the additional staff and volunteers both national and international to be recruited for implementation of the Accord under the aegis of NHRC and UNOHCHR and work closely with the set-up that will be created by the NHRC and UNOHCHR. It will facilitate the creation of a large group of human rights professionals and promoters and will increase the capacity of individuals and organisations currently active in the field of human rights at a local level. As such, the Regional Offices will become the primary field level planning, implementing and logistical management unit for NHRC and UNOHCHR. At present the capacity development aspect of the project, especially in terms of providing international expertise is being carried out by the Capacity Development Project of the NHRC.

To begin with, these offices, apart from doing work according to the NHRC mandate will also conduct sensitisation programmes of senior government (civil, judicial and military) officers on human rights issues throughout the country will be arranged for the 5 Regional Administrators, 75 Chief District Officers, 5 Regional Court Judges, District Judges, 73 Jail Superintendents, 75 District Superintendents of Police, 75 army officers, 375 district level leaders, and 75 district level officers responsible for district development planning. This will have a three-pronged effect on the overall human rights situation. Firstly, the authorities will become sensitive to the issues. Secondly, the increased sensitivity will help improve the human rights situation in the region. Thirdly, development planning in the region will be influenced by a human rights based approach.

The present arrangement allows some degree of involvement of the regional offices in the matter of investigation and case processing, leaving major works to the headquarters. This issue needs to be discussed at length, making changes as necessary. As an option, for example, cases which can be settled by way of mediation may be resolved at the local level. Certain type of cases in which local governmental authorities are involved may be settled beally with necessary delegation of powers from the headquarters. If the regional offices are to develop more effective outreach, the greater number of complaints generated would test the system to breaking point. This in turn is the consequence of another systematic problem: it is often difficult to attract qualified personnel to
out-of-the-way regional offices when they might find alternative and better-paid employment in Kathmandu.

Every region has a few administrative districts. In the absence of district officers, the Commission can implement a system of liaison officers. They can be part time representatives of the Commission who, in order to retain a perception of independence, are not usually associated with local human rights NGOs, but are often academics. This suggestion has often been disliked because the human rights NGOs, especially those who have filed presence, have the opinion that those appointed should be activists with a track record of human rights work. But there is no harm even to have a formal networking with human rights NGOs. Even otherwise, it is NGO activists who helped the local human rights victims to file complaints to the Commission, or to provide local support to the NHRC missions when they visited districts either for investigation of a particular case, or for the general monitoring.

A central rationale for national human rights institutions is that they provide an accessible, no-cost means of redress for the most vulnerable sections of society, who will have particular difficulty gaining access to conventional legal means of resolving their problems. The physical location of the institution is one aspect of accessibility and institutions have adopted a variety of other methods. The Commission's human rights status paper is clear on who are vulnerable in Nepal, and in what way. Vulnerable groups are often Dalits and ethnic minorities, women, children and so on. The Commission has to take up the concerns of these groups. This is most effectively done if the institution makes a conscious efforts to identify groups with which it is attempting to work, and maintains regular contact and exchange of opinion on emerging issues. The approach will be even more effective if the vulnerable groups are themselves represented on the regional structures of the Commission. As with vulnerable groups, the Commission needs to organize its planning, as well as its self-evaluation and reporting, to take account of gender. This looks ambitious when one finds that the issue of representation is unaddressed even in the commissioner level at headquarters.

With the expansion of outreach programme, the need of the Commission is to establish a human rights reporting system which will enable its regional offices to report every violation to the headquarters, case by case, no matter what type of abuse or where it happens, and maximize the value of

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critical information about past and ongoing human rights violations in the regions. The most powerful weapon against rights abuse is the truth, accurately captured, safeguarded and quickly communicated to people who can use it to make a difference. Today however, the records of grassroots groups are too easily lost, confiscated or destroyed. The Commission will need a technology with an easy way to store testimonies and information as bulletins with both private and public components, to save those bulletins in encrypted form, and to securely back them to a remote server when convenient. The broad deployment and use of tools like this can guarantee that this information is safe and available.

A series of back up servers can support a globally accessible knowledge base of bulletins on the Internet that will be free from tampering or destruction. This will make sure that when the time comes to bring perpetrators of human rights abuse to justice, key information about their crimes are not lost. With violation information preserved and accessible, large-scale patterns of abuse or single incidents can be easily mapped. Multiple testimonies can be gathered. And prosecutors can be reinforced by verified data from a trusted source, helping bring formerly untouchable criminals to justice. Such a tool can protect information from loss, theft or destruction, and ensure that records are preserved, allowing researchers to better assess the scope and scale of violations and to build a case of violations and to build a case of patterns of abuses based on information from more witnesses. It will also provide the Commission with power over its own information, allowing it to decide what to make public and what should be kept securely private.  

**Prison Issues and Domestic Visiting Mechanism**

Nepal does not have a systematic approach in monitoring visits to prisons and other places of detention. There is no mechanism as such, but the existing laws certainly contemplate some procedures in this regard. The Capacity Development Project has a plan to work on this aspect.

Article 11 of Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), which Nepal ratified in 1991 requires that each state party shall keep under systematic review.

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67 One such tool which the Commission is considering is Martus software, which is said to be usable, secure, with ability to search specific violations, and transparent. This software was developed by Benetech with a major grant from the information programme of the Open Society Institute, extensive support from ASPIration and funding from individual donors and the Benetech itself. See [www.martus.org](http://www.martus.org)
interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to prevent any cases of torture. Although Nepal is a signatory to this Convention, torture has yet to be considered as a criminal offence under the laws of Nepal. The focus of the Commission is no doubt on this major issue of criminal law since long.

The December 2000 Optional Protocol to the Convention is a unique and innovative instrument which Nepal Government has not yet considered ratifying although it gives new dimension to the national efforts to prevent torture. The protocol recognizes that for effective protection against torture and other forms of ill treatment, sustained national as well as international efforts are required. The Protocol deals with state obligations to set up, designate or maintain national visiting mechanisms. It responds to the questions like when do the mechanisms have to be in place; what form do the national mechanisms have to take, and what should be the mandate of the national mechanisms. It lays down clear criteria and guarantees for the effective functioning of national visiting mechanisms: functioning independence; composition of national mechanisms; guarantees and powers in respect of visits; and recommendations and follow-up to visits. Its provisions also focus on co-operation between the authorities and the visiting mechanisms, cooperation and inter-relationship with sub-committee under the protocol, and direct contact with the sub-committee. Thus, the human rights community in Nepal has requested the Government to consider ratifying this optional protocol.

Article 9 (2) (e) of the Human Rights Commission Act 1997 specifies the authority of the Commission to visit, inspect and observe any authority, jail or any organization under the Government and to submit necessary recommendations to it on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights. This power has been given to the Commission within an overall mandate for human rights promotion and protection, in particular by reacting to complaints from individuals, and also multifarious powers towards proactive human rights works including awareness building and human rights advocacy. It has wide ranging powers to investigate, including issuing of subpoenas with regards to persons and documents. The result of its work is mostly recommendations, which are not legally binding, but are accompanied by a formalized procedure for receiving official response. The non-coercive nature of its findings in contrast to the judiciary is a significant limitation; nevertheless, the system has encouraging results.
The Commission has in many instances conducted periodic visits to prisons and other detention centres to investigate and inquire about condition of the prisoners and the overall condition of such facilities. Such visits include inspection of various men’s and women’s prisons in various districts of Nepal to identify the various problems found in prisons. Monitoring teams have obtained information about the number and condition of prisoners, including women prisoners and mentally deficient prisoners, details of prison sentences, and the education, health condition, etc. of the prisoners and their dependant children. The team also have obtained information about physical facilities such as sleeping quarters, toilets, school, library, health centre, electricity-lighting, water supply, sports and entertainment facilities and about such issues as the employment industry and skill generation of the prisoners.

The prison study teams of the Commission during its visits have also received complaints and suggestions from prisoners, chiefs of prisoners, guards, security personnel, staff of the Prison Management Department, jailers and other staff of prisons. The teams also compile all these complaints and suggestions, along with their own observations about various issues during the visit, in the form of a report. The common problems observed by the study teams during its visits and the suggestions and recommendations have also been sent to the Home Ministry for necessary action, when needed.

Monitoring human rights and conducting visits to detention centres and prisons has been a major challenge especially at a time when Nepal is mired in armed conflict initiated by the Nepal Communist Party (CPN-Maoist) for a period of more than eight years. Nevertheless, it has become all the more important to address the issue due to the growing number of detentions in prisons and such other facilities. A significant reason for starting monitoring activities by the Commission was the commencement of the Terrorist and Disruptive Activities (Control and Punishment) Act, which gives further powers to the state to deal with these rebels. At a time of armed internal conflict there is a greater probability of violation of the basic principles of humanitarian law stated in the Common Article 3 of the Geneva Conventions. To find out the reality about the events of such violations made by the State Party and the CPN (Maoist) continues to be another objective of the monitoring.

Although over a decade has elapsed since the restoration of democracy in Nepal, no amendment has been carried out in the Acts and Laws related to prisons in the country with the purpose of overhauling the system. It belongs to the accepted functions of the judiciary in a democratic state based on the rule of law to control executive action on the basis of the laws of a country, including human rights guarantees. There is a provision in the
existing Prisons Act 1963, which stipulates that a judge from the Appellate Court should conduct visits to local prisons at least once a year and submit reports for necessary reforms. Judges generally act alone. In the past, the Supreme Court judges or judges at the District Courts also used to make such visits at their convenience. However, there is no enabling law in this regard, and such measures have not been regularly implemented and systematized. Similarly, the laws of Nepal have also not empowered the Government attorneys to look at the conditions of detention and rights of detainees in police detention.

The visit to prisons by Chief District Officer (CDO) who is the Government’s administrative representative at the local level is sanctioned by law. S/he reports to the Home Ministry of His Majesty’s Government.

The area of prisoners’ rights and conditions of detention has been one of the significant works of human rights NGOs. They have access to the prisons on the basis of prior approval from the authority concerned. Some of them carry out systematic visits, and have developed professional methods, including the questionnaires. Results of NGO works are typically public reports with recommendations, and the authority of NGO work and recommendations is strongly linked to their professionalism.

The prison system is the area where all these provisions apply. The categories mentioned above are basically active there. But the monitoring efficiency is always questionable. Police monitoring mechanisms hardly exists. Some NGOs work in this area, but they are a relatively late development. Similarly, there is no specific mechanism to be applicable to military places of detention within the general mandate of chief district officers or the members of the regular judiciary. There has been very little change in the physical facilities in prisons, no noticeable increase in the ration provided to the prisoners and no appropriate provision of employment, skill generation and capacity building in prisons. All the above-mentioned problems and other problems remain prevalent in prisons, as a result of which the prisoners have yet to develop reformatories. Due to limited resources and the absence of training and motivation, those who have to work in the dreary environment of prisons have not been able to perform as expected. Reformative measures are lacking and impunity has thus been the usual norm in many cases.

This is high time that Government shows its commitment to the Optional Protocol and initiates measures to reform the existing system. Torture is a major human rights problem in Nepal. Under the Optional Protocol, state parties have obligations not only in respect of the sub-committee, but also the national visiting mechanisms to ensure their effective functioning. For the first time, in an international instrument the mandate, scope of
application, composition and methodology of national visits have been prescribed. It is envisaged that the new approach of codifying national efforts to prevent torture in cooperation with an international mechanism will assist the implementation of international standards at the local level. It is therefore essential to the effective functioning of the Optional Protocol as a preventive instrument that appropriate, competent, independent national mechanisms are established, maintained or designated by state parties.

Dealing with CPN (Maoist) and Its Insurgents

In dealing with the Maoists, the Commission has a two-pronged approach: the first is to call them to stand by international humanitarian principles, especially Common Article 3 of the four 1949 Geneva Conventions, and then show respect to the human rights of the common people. The second is to work for credible ceasefire with full determination to find peaceful resolution of conflict. The Commission although a state functionary has avoided using the term ‘terrorist’, both to the Maoists and their organization, and frequently condemned violence – asking them to refrain from doing activities that are not suitable to a political party, which they claim they are. This approach has largely worked.

The Maoists take the Commission as an extension of the old regime (assuming that their’s is the new regime) but have refrained from affecting its human rights activities. So far, in the investigations and monitoring works, the local people have been cooperative, and Maoists have not been seen interfering in any way. Several incidents of Maoist atrocities have been investigated, but that has not provoked anybody. However, human rights violations are by no means the sole preserve of the Government or the armed forces. Indeed, the Maoist insurgents are responsible for a significant number of human rights violations. The challenge facing the Commission is how best to discourage the Maoists from violating human rights: how does the Commission, an institution designed to play a key role in Nepalese democratic civil society, confront human rights abuses perpetrated by an organization that aims to fundamentally challenge the democratic order.

As one can see, most of the human rights violation cases perpetrated by Maoists are sent to the Government for further action. In other words, according to the law of the land, they make criminal cases, and the Commission has little to do than to do the promotional works, and generate human rights consciousness.
The Commission had criticized the plans of the Government in late 2003 to set up *Rural Volunteer Security Groups and Peace Committees* to counter Maoists locally. It had warned that such measures can put the civilian population in grave danger by seriously compromising their neutrality. The Committees were to be set up as a way to promote the role of the general citizens in maintaining peace and security. Without appropriate supervision, training and clearly defined mechanisms for accountability, there is a clear risk that the creation of these groups could lead to an increase in human rights violations carried out with impunity. Those refusing to join are likely to be seen as tacitly supporting the armed opposition. The introduction of such groups affects the sense or interpretation of the Geneva Conventions of 1949, in relation to the state's responsibility at all times to clearly separate civilians from combatants.

**Working with the Royal Nepal Army**

The most powerful force in the state in Nepal at present is the Royal Nepal Army. It has been continuously held up by the successive governments since the last three years to counter Maoists, disarm them and force them to come into terms with the Government in a peace plan that could be eventually agreed by both sides. In the process, the Royal Nepal Army and the security forces led by it under the modality of a unified command have been frequently involved in the violation of human rights of the common people.

Early since the mobilization of army to suppress the Maoist movement, according to the decision of the democratic Government, it has been realised that one of the great weaknesses of the Commission is its inability to deal with the human rights violations done by them. As the Commission has found, numerous human rights violations, ranging from extrajudicial executions to torture, to arbitrary arrest and detention, continue to be perpetrated by the armed forces and recorded by the Commission and external monitors. One representative example, however, occurred at Doramba, in the Ramechhap district, on 17 August 2003. In the course of investigating that incident, the Commission found that the armed forces perpetrated a number of human rights violations, including the extrajudicial execution of at least 19 suspected Maoists. The armed forces’ response was to question the validity of the Commission’s report and to launch an internal investigation. Following a continued process of rebuttal, the army finally conceded that the report of the Commission was largely correct. Often, the Government and the armed forces characterise these violations as being necessary for the purposes of fighting the Maoist insurgents. In several cases, the army has just dismissed any claim of the
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Commission. In other words, a culture of impunity pervades the armed forces. Impunity is dangerous not only because it means that criminals go unpunished, but because it sends a message to members of the armed forces that it is acceptable to violate human rights.

It has also been alleged that the Commission’s stance on the Doramba incident was one of the Government’s motivations for creating the Human Rights Promotion Centre.

Many of the army officers until recently entertained the belief that the Commission does not have power to involve with them either in respect of human rights investigation or general monitoring. The basis of this argument was the Article 10 of the Human Rights Commission Act, which maintained that the Commission shall have no power to inquire into or institute any other proceeding on any matter within the jurisdiction of the Military Act. Although the Act did not prohibit dealing with cases in which the army is involved with civilians, they connived that the army is not within the civil jurisdiction of the Commission. By way of context, it should be noted that the Military Act, enacted in 1959, has not so far been updated to accord with the principles contained in the Constitution of Nepal of 1990, which takes all powers over the army from the King and vests them in the prime minister. This also gave the army the feeling that they are still accountable to the King, who chose to be an active monarch once again after the dismissal of the elected Prime Minister in October 2002. Under the Military Act’s provisions, effective command of the military is vested in the King rather than in civilian Government. Thus there could be no question of human rights insensitiveness.

The governments in recent months have so far argued that the violations of human rights by some members of security forces should not be the basis to accuse the whole Royal Nepal Army and the security forces under its unified command, and disrepute the national army. To prove this logic, in recent months, the army is said to have started taking actions against some human rights violators. In this context, the police, the armed police and the armed forces have already instituted human rights cells in their headquarters to look into cases of human rights violations. There has been substantial criticism that the actions being taken are only in a few cases, and the cells that are created are not capable to meet the challenges of justice and transparency as are required to satisfy the human rights concerns. Some sincere attempts are being made by the Commission to establish rapport with these cells, and process complaints received against

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68 Surya PS Dungel et al, at 661
members of the security forces. It has been seen that the Ministry of Defence and Home Ministry are helpless to force these cells to abide by the Commission's instructions.

With the increasing number of interactions with the senior officials of the army and police, the level of acceptability of the Commission is increasing. The confrontation of the Commission with the security forces is gradually simmering down. It is generally felt that the civil police of Nepal, including the armed police under the Home Ministry have not generally been difficult to tackle with. The routine meetings of the Commission with the Home Ministry including senior officials of the civil and armed police from the Police Headquarters has largely been successful, and the exchange of information as well as the flow of concerns of the Commission has been well received by the Home Ministry. The problem however has become insurmountable after the concept of unified command was introduced. This gave the Royal Nepal Army control over strategies to deal with Maoist violence, which also meant the control over the civil police and armed police, who were now to follow the army and supervised by them. The army officials have been largely reactive to address the human rights concerns of the Commission. Just three days after Prime Minister Thapa announced his Government's Declaration of Commitment on human rights and international humanitarian laws, the Army wrote a strong letter to the Ministry of Defence to keep the Commission under control, which the Defence Ministry did not dare to respond positively, forwarded the Home Ministry to respond. The letter written by the Commission to the Chief Secretary of His Majesty's Government in protest to the letter of the Home Ministry explains the general psychology of the Royal Nepal Army. Excerpts of the letter follow:

“This letter is being written with regards to the letter received by the Commission from the Home Ministry (Pa. Sam. Sha. Su 060/ 061 Ref. No. 3948 Dated 2060/12/16).

The letter states that the Commission has been “…preparing one-sided reports sending the message to the public and also to the international community that the security forces are causing atrocities, thereby tarnishing the image of the security forces…”, raising questions on the Commission’s impartial activities, and has therefore drawn serious concern of the Commission. The letter also stated that “while deploying the teams for investigation of complaints against the security forces, the Commission and other organizations have to compulsorily inform local security forces and include a representative from security forces in the investigation team”, which clearly seeks to undermine the impartiality
and independence of the Commission and is in contravention of the provisions of the Human Rights Commission Act, 2053.

The Commission is surprised that the letter from the Ministry of Home Affairs has disregarded the declaration made on March 26, 2004 by Rt. Hon. Prime Minister Surya Bahadur Thapa on “His Majesty’s Government’s Commitment Towards Implementation of Human Rights and International Humanitarian Law”, and undermines the Commission’s impartial activities and its prestige. The Commission has therefore taken the letter from the Home Ministry as an illegal attempt to intervene in its activities.

The Commission considers it regretful that such a letter has been sent to it at a time when the Commission’s role as an independent organization and its active role in the protection of human rights is drawing serious national and international attention. I would also like to draw attention to the fact that the security agencies have also in the past charged the Commission of being biased, and such charges have proven to be false as evidenced by the fact that the security agencies themselves have accepted their mistakes in operations such as those in Doramba and Chisapani, among several other incidents.

As per the Commission’s decision of 1 April 2004, the Commission hereby requests for measures to be taken in the future for the prevention of such interventions on the Commission’s activities on the basis of such factually incorrect issues. The Commission is confident that attention will be drawn to this issue and necessary action will be taken on those initiating such correspondence.69

This shows that the sceptical attitude towards human rights, and towards the Commission, still seem to pervade the armed forces. A recent example of non-cooperation of the army is best demonstrated by a letter addressed to the Commission on from the Royal Nepal Army70:

“On 7 June 2004 at about 1500hrs, 4 persons with the letter of the National Human Rights Commission arrived at the gates of the Bhairavnath Battalion and requested the officer on duty to allow them to meet the Battalion Commander. The officer on duty informed that the Battalion Commander was not present at the battalion barracks and also informed that necessary order from above was required for entry. The individuals submitted their letter and left upon receiving the information.

69 See NHRC E-Bulletin, Vol.2 No.7, Friday, April 2, 2004
70 Unofficial translation of the letter from the Adjutant General’s Department (Legal Branch) of the Royal Nepal Army, filed at the Commission dated 14 June 2004.
On the second day on 8 June 2004 at 0900hrs, the Battalion Commander was contacted in his mobile phone and once again access inside the Battalion Headquarters was sought. When the Battalion Commander informed that he was out of the barracks on work and would talk later, it was found later that the newspapers had publicized the incident with a negative intent towards the Royal Nepal Army.

In the current sensitive situation, it is essential to receive permission from a higher authority to allow access to anyone inside any military premises. It is therefore inappropriate to directly correspond to the particular military premise to gain access.

The Royal Nepal Army has a standard procedure for access to its premises. In the various interactions held between the officials of the Royal Nepal Army and the National Human Rights Commission, the officials of the Royal Nepal Army have repeatedly informed that to gain access to any military installation, it is necessary to inform the authority higher than that particular installation, i.e. the Royal Nepal Army Headquarters, and access is only allowed after the approval from the Royal Nepal Army Headquarters. The Ministry is also aware that the process had also been discussed by the Adjutant General of the Legal Branch of the Royal Nepal Army in a meeting held at the National Human Rights Commission, which was also participated by the Chief Secretary, Defense Secretary and the Acting Secretary of the Home Ministry. Only after prior notification to the Royal Nepal Army Headquarters has been made, and the concerned commanders have been informed, that access has been granted to the army barracks. This was evidenced last year whom the Brigadier General of the Legal Branch of the Royal Nepal Army himself had taken the Hon. Commissioner of the National Human Rights Commission Sushil Pyakurel inside the barracks. As such, it is requested to inform the National Human Rights Commission that it would be practical and easy if the Royal Nepal Army Headquarters is informed of such visits to army barracks in the future.”

The Commission has time and again stated that the visiting powers of the Commission cannot be contingent on the procedures of any state institution; neither is it unqualified and subject to confirmation as per the rights vested upon the Commission as per Article 9 (2, e) of the Human Rights Commission Act (1997). Similarly, such obstructions to monitoring visits have been found to be in contravention Article 24 (j, k and l) of the Government’s Declaration of Commitment to Human Rights made public on 26 March 2004. Similarly, it is also in contravention to the letter issued by the Office of the Prime Minister and the Cabinet Secretariat dated 15 April 2004, in which the Commission was assured of the necessary steps that had been taken to allow the staffs and officials of the Commission free and unimpeded access to detention centres.
Furthermore, the Commission’s independent, impartial and autonomous role in fulfilling its legal responsibilities, as well as in carrying out its activities as per the order of the Supreme Court had been obstructed during the particular incident involving the visit to the Battalion.

**Economic, Social and Cultural Rights**

An essential requirement for peaceful social transformation is the respect for, and protection of human rights of all people. It is important that the implementation of economic, social and cultural rights forms part of a comprehensive human rights approach to peace settlement in Nepal. This approach, at the minimum, is based on the Universal Declaration of Human Rights. Its first preambular paragraph underlines that inherent dignity and of the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world. The Declaration further states that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

While pressure tactics are being resorted to by both sides of the warring groups on their political fronts, there does not seem to be a reasonable level of commitment to protect the rights of people in the conflict affected areas. The National Human Rights Commission has for a long time been insisting that a core element in recent peace process and transitions to full democracy in many countries has been the commitment by the parties to ensure human rights in all their aspects. This has been followed up by corresponding constitutional or legal steps.

One example is the peace settlement in Guatemala. The Comprehensive Agreement on Human Rights, adopted on 29 March 1994, was the cornerstone of the peace agreement after many years of internal conflict. In that comprehensive agreement the Government of the Republic of Guatemala reaffirmed its adherence to the principles and norms designed to guarantee and protect the full observance of human rights. Its political will in enforcing this commitment and the encouragement of measures committed itself to encourage all those measures designed to promote and perfect norms and mechanisms for the protection of human rights has played a major role in deescalating violence.

South Africa provides another important example of a constitutional solution that made possible a peaceful transition after the end of apartheid. In the new South African Constitution, economic, social and cultural rights
as well as civil and political rights are fully incorporated and have been made justiciable rights with a constitutional court to ensure their implementation. The Constitution contains provisions on the rights of everyone to housing, health care, water, adequate food, education, the right to fair labour practices and to form and join free trade unions

Article 22 of the Universal Declaration of Human Rights explicitly deals with these rights. It states that everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. According to Article 28 of the Universal Declaration, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

Paragraph 5 of the Declaration of the World Conference on Human Rights, held by the United Nations in Vienna in 1993, underlines that human rights are universal, indivisible and interdependent and interrelated. This means that economic, social and cultural rights must be treated in a fair and equal manner, and with the same emphasis as other human rights. It is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Attention also needs to be given to the UN Declaration on the Right to Development, adopted by the General Assembly in 1986.

**Relationship with United Nations Office of the High Commissioner for Human Rights**

With the worsening situation of human rights, the National Human Rights Commission has shown increasing willingness to work further with the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) in the area of human rights monitoring. Similarly, given the difficult human rights situation and ongoing conflict in the country, the OHCHR has also taken note of a tremendous challenge of the Commission in carrying out its statutory mandate to investigate, monitor and report on the human rights situation in Nepal. The role envisaged for the
Commission under the proposed Human Rights Accord places even more pressure on it as an independent human rights institution.\(^71\)

In recognition of this situation, in November 2003, UNDP and OHCHR reached an understanding in principle of cooperation modalities to provide support to the NHRC, so as to enable it to build a sustainable capacity to carry out monitoring, investigation, reporting and advocacy, during the present conflict and in the context of a future post-conflict situation. This support is to be provided under the overall Strategic Plan of the Commission for 2004-2008, so as to enhance its statutory monitoring role in a sustainable manner. It is clear that in the immediate term, the protection of civilians and non-combatants must be the main and overriding priority for any human rights initiatives taken in today’s Nepal. At the same time it is also recognized that capacity building of the NHRC is not a substitute for concrete and credible action by the parties to protect civilians and other non-combatants, nor should it by itself be seen as a sufficient step towards affording such protection.

In fact, this is not the first time that the UNOHCHR has shown its interest in Nepal. OHCHR has been engaged in a number of technical assistance activities in Nepal since the transition to democracy in 1990. In 1991, the Government of Nepal submitted to the then Centre for Human Rights (CHR) a request for technical assistance for the translation of selected human rights instruments into Nepali and for distribution through a local NGO. The project was completed in 1993. Subsequent to the visit of the High Commissioner for Human Rights to Nepal in 1994, Nepal submitted a new request for technical assistance, and in November 1996, the OHCHR initiated a project aimed at improving the situation of human rights in Nepal by strengthening the system for the administration of justice, building national capacity to address human rights issues and enhancing the capacity of local NGOs. Under this project, a total of 12 activities such as seminars and workshops were carried out in the areas of administration of justice, treaty accession and reporting obligations, support to NGOs, development and human rights, rights of women, establishment of a National Human Rights Commission and publication of a compilation of international instruments ratified by Nepal. A final evaluation mission of the completed project was carried out in November 2000. At the request of the UN Resident Coordinator (RC) in Nepal, in March 2003, the OHCHR also appointed a senior human rights officer to work with the UN Country

\(^71\) This portion of the research is informed by the author's interaction with Gianni Magazenni and Henrik Stenmann of the Office of the High Commissioner for Human Rights (OHCHR) and is based on the documents shared with the NHRC in February 2004.
On 25 September 2003, the Acting High Commissioner for Human Rights issued a statement welcoming investigations by the Commission into reported violations of human rights and humanitarian law by security forces of His Majesty's Government and insurgents of the Communist Party of Nepal (Maoist) in Ramechhap, Siraha and Panchthar, and calling on the Government to act swiftly on the findings of the Commission to ensure that there was no impunity. He also stressed that the break-down of the cease-fire made it even more imperative that both parties sign the Human Rights Accord developed by the Commission, and confirmed the readiness of the Office of the High Commissioner to provide technical assistance to help the Commission carry out its role to monitor and verify the implementation of the Accord once it is signed. In a further statement on 4 February 2004, the Acting High Commissioner expressed his concerns at the increasing number of reports of human rights violations since the breakdown of the ceasefire. He also reiterated his call on both parties to urgently sign the Human Rights Accord as a mark of their commitment to international human rights and humanitarian law, adding that the OHCHR remained ready to provide technical assistance to support the National Human Rights Commission in carrying out its role under the proposed Human Rights Accord.

Moreover, the UN Human Rights Commission (UNHRC) wrapped up its 60th annual session in Geneva on 23 April 2004, amid criticism that it was too soft on governments that abuse human rights. This year, its 53 rotating member states also discussed several thematic issues, including human rights and counter-terrorism, the death penalty and violence against women. Switzerland, which hoped to become a full-member of the Commission by 2007, and which contributed annually to around 100 resolutions to the UN Commission on Human Rights as an observer state, had a crucial role this year to get a clear mention about Nepal in the...
Chairman's Item 19 statement related to the provision of advisory services and technical cooperation.

This statement has not satisfied everybody. Critiques pointed out that the UNHRC has moved away from naming and shaming countries in favour of providing violators with technical assistance. It remains a fact that although the Commission on Human Rights has a mandate to denounce flagrant human rights abuses around the world, the majority of states are only interested in protecting themselves. Political manoeuvring in several cases has led the majority of member states to take a soft stance on several critical issues. A number of NGOs attending the 60th session had criticism, for example, on handling of human rights matters related with Guantanamo, China and Sudan. In fact, Amnesty International, the European Union and Switzerland had also urged the Commission to establish a mandate to monitor the human rights situation in Nepal and to support a long-term and adequately backed observer presence in the country. The Commission had nevertheless succeeded in passing a resolution on the elimination of violence against women, along with the chairperson’s statement on the human rights situation in Nepal – two issues that Switzerland had lobbied hard for over six weeks prior to the session. With the support of European Union, Amnesty International and other allies, Switzerland was successful to bring Nepal in the fold of the offer of technical assistance.

The Commission on Human Rights approved on 21 April 2004 the statement of its Chairman related to the provision of advisory services and technical cooperation under Item 19. In this statement on human rights assistance to Nepal, the Commission had expressed its concern at the human rights situation since the breakdown of the ceasefire on 27 August 2003, and at the growing number of civilian victims as a result of ongoing violence. It had appealed to the Nepalese Government to strengthen its efforts to ensure the enjoyment of fundamental rights by all people in Nepal and condemned the indiscriminate violence perpetrated by the Communist Party of Nepal (CPN-Maoist), including the use of children in armed conflict, and strongly appealed to the Maoists to respect the human rights of all people and to renounce violence. It had also encouraged the Government in its efforts to investigate and prosecute all violations, including those committed by the security and armed forces. In this context, the Commission had also welcomed the Government’s "Commitment on the implementation of human rights and international humanitarian law" of 26 March 2004, in particular its commitment to promote and protect human rights and fundamental freedoms and to fulfil all its international obligations.
The Commission supported the efforts of the Government and the Office of the High Commissioner for Human Rights aimed at developing technical assistance and advisory services and to facilitate necessary external assistance, especially to the National Human Rights Commission, including through the signing of a Memorandum of Understanding (MoU), and strongly encouraged the Government to continue its efforts to these ends and welcomed the fact that the Government had extended invitations to the special procedures of the Commission to visit Nepal. It encouraged the Government to cooperate fully with them and to implement their recommendations. The Commission also welcomed the signature by the Government of Nepal of the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and appealed to the Government to ratify the instrument.

Despite these successes, it is disappointing that there was no mention in the statement of the Chairman of the UN Commission on Human Rights on the issue of protection of human rights and fundamental freedoms while countering terrorism. It did not call upon the Government of Nepal to ensure that any measure taken to combat terrorism be complied with the Government's obligations under international law. Similarly, the Maoist violence was not condemned much except in the case of use of minor children. This may give a wrong impression to many people that Maoists are human rights friendly in other matters involving their insurgency.

Nonetheless, building on this general understanding, the OHCHR has started working with the UNDP country office in Nepal and the National Human Rights Commission in line with the existing long-term UNDP-coordinated capacity building programme by increasing the Commission's ability to receive and process complaints to carry out investigations and monitoring in the context of the ongoing conflict. More importantly, it also aims at assisting the Commission to expand its advocacy and public information activities so as to more systematically explain to the Nepali public and media its functions, activities and overall objectives, including its advocacy for the Human Rights Accord. It is recognized that these are key competencies and capacities that the Commission will have to develop, whether or not the proposed Human Rights Accord is finally signed or not. At the same time, notwithstanding the current uncertainties vis-à-vis the peace process, the OHCHR has also recognized the need to put in place structures for a rapid activation and deployment of the proposed expanded monitoring unit in the Commission, as and when the Human Rights Accord is signed. Accordingly, the purpose of the present project is also to develop specific technical capacity of the Commission, so as to prepare for
expanded monitoring work, including the deployment and training of additional field monitors, as well as the preparation of manuals and other materials, as envisaged under the proposed Human Rights Accord.

In order to place the current project in a wider operational context, it may be noted that in the event of both parties signing the Human Rights Accord, the Commission with the technical assistance of OHCHR proposes to initiate immediate deployment of additional monitors in five regional centres, based the preparatory work carried out under the present project. This expansion would be carried out in stages, tentatively as follows:

(Phase 1): After the signing of the HRA: A one-month expanded set-up team with first tranche of international and national monitors deployed and trained;

(Phase 2): Two month completion of full deployment of monitoring teams in the five regional centres, and

(Phase 3): Six months of full operation of the monitoring unit. Staff would be deployed gradually with a provision of peak-strength in terms of international staff and national staff, divided between Kathmandu headquarters and the five regional centres.

In addition to building specific technical capacities within the Commission, the project will also provide a framework for coordination of the various other support programmes and initiatives for the Commission which are already ongoing or are planned for the near future. The present proposal complements the European Commission funded project- “Expansion of Outreach of the National Human Rights Commission NHRC, Nepal”, as well as for other monitoring and protection related projects supported by bilateral donors, including DFID/UK, Norway, Denmark, Canada and Switzerland. The key element of the EC funded project is to set up two, and eventually five regional centres of the NHRC throughout the country, which will be charged with outreach work to raise awareness of human rights and mechanisms for remedy, in particular about the role of human rights in the current situation in Nepal. The creation of this nationwide structure will enhance both the educational and monitoring role of the NHRC. These five regional centres are also intended to provide the basic infrastructure for NHRC to assume its expanded monitoring role under the Human Rights Accord, if and when it is signed by the parties.

The OHCHR and UNDP have indicated their readiness in principle to lend technical assistance to the expanded monitoring unit of the NHRC, in the
event that the Human Rights Accord is signed by both parties. A separate project to support this larger initiative will be drawn up by OHCHR in cooperation with UNDP, as and when the situation so warrants. However, should the signing of the Human Rights Accord be delayed, it is proposed that the initial phase of the project as described above be extended, so as to continue technical assistance and advisory work, aimed specifically at strengthening and developing an independent and sustainable monitoring, advocacy and investigation capacity, particularly in support of the Commission's work during the ongoing conflict.

Meanwhile, the delay on the part of His Majesty's Government to sign the Memorandum of Understanding (MoU) with the United Nations High Commissioner for Human Rights (OHCHR) concerning technical assistance to the National Human Rights Commission is causing dismay to the human rights community of Nepal. The reason behind the delay has not been explained.

The human rights community has long been waiting to see that OHCHR is involved in some way with the NHRC of Nepal in promoting and encouraging respect for human rights. The Commission, whose primary mandate is not only to hold the state accountable for the effective enjoyment of human rights, but also to consistently criticise the Communist Party of Nepal (Maoist) for their abuses, has already made it clear that there is a need for such technical assistance.

The draft MoU, which was submitted by OHCHR to the Government a few months ago, establishes the general terms and conditions for such a technical assistance programme. It aims at enabling the Protection and Monitoring Division of the Commission and its outreach offices to carry out their statutory monitoring and investigations functions. The focus, in particular, is on the additional and specific role assigned to the Commission under the Declaration of Commitment regarding human rights and international humanitarian law announced by the Government on 26 March 2004.

Recognizing that in order for such a monitoring arrangement to be operational and have the desired effect as an effective tool for human rights protection, the NHRC would need to have nationwide coverage. Such monitoring arrangements can be carried out independently only by adequate numbers of well resourced human rights monitors, enjoying freedom of movement and full security guarantees. The draft also envisages that the OHCHR in cooperation with UNDP Country office in Nepal will recruit and deploy necessary international advisors at NHRC
headquarters and propose field officers to provide advice and support to the national monitors working out of these offices, in addition to supporting the outreach programmes of the Commission by providing United Nations Volunteers to carry out its monitoring mandate. In any case, the activities of OHCHR/UNDP are to be done through the capacity building activities already being undertaken under the auspices of UNDP and are to be aimed at fulfilling NHRC mandate and its objectives.

The draft MoU also deals with regulation of the status of UN personnel, their asset funds as well as property in Nepal, and facilitation of OHCHR/UNDP's cooperation activities with the Government. It provides that the OHCHR, its property, funds and assets wherever located and by whomever held shall enjoy immunity from every form of legal process, except insofar as in any particular case, the Secretary General of the United Nations has expressly waived its immunity. Once the MoU is signed, the OHCHR officials will enjoy the benefits of the provisions under the Convention on the Privileges and Immunities of the UN, adopted by the General Assembly in 1996 (to which Nepal is a party since September 1965). Personnel recruited in Nepal will also be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Officials shall enjoy freedom of entry into, exit from, and movement throughout Nepal. The Government shall recognise and accept the UN laissez-passer issued to officials of OHCHR as a valid travel document equivalent to a passport. Finally, the Government will have to provide OHCHR officials such security as is required for the effective performance of their activities.

With the re-installation of Prime Minister Sher Bahadur Deuba, who was arbitrarily dismissed from his lawful office on 4 October 2002 on the charge of incompetence, there is now a proper environment to move forward on this matter.

As a result of the current situation, the difficulty of bringing the perpetrators of human rights violations to account in most of the cases is clear. This is one of the most serious human rights problems and a fundamental reason why human rights violations continue to be committed. The involvement of the OHCHR can help check the failure of the state to meet its obligations to investigate violations and ensure that they are prosecuted, tried and duly punished. Similarly, grave abuses of human rights, such as torture, kidnapping, hostage taking, extortion, killing, and suppression of freedom of opinion, routinely occur in areas under Maoist de facto control. Their armed cadres, although politically motivated at times, are often found by the National Human Rights
Commission to be engaging in purely criminal activities. The Commission does not discriminate among victims. The NHRC has therefore urged each individual in a position to influence the conduct of their subordinates to reflect on their responsibility, and on how they would account for their action or inaction before a court of law - as well as before their families and community. The assistance of OHCHR can also help the Commission to deal with the Maoists on human rights and humanitarian issues.

**Building National Rapporteur on Trafficking in Women and Children**

The National Human Rights Commission has been working in the area of trafficking in women and children as a major human rights issue in the country. It is mindful of the fact that Nepal has not fully complied with the minimum standards for the elimination of trafficking.

The Constitution of Nepal guarantees against trafficking in human beings. In addition, the Human Trafficking Control Act of Nepal, 1986, prohibits selling persons and provides for penalties of up to twenty years imprisonment for traffickers. Some limited resources have also been provided to non-governmental organizations to make available victim assistance for rehabilitation, counselling, and medical care. Victims are not jailed, detained, or reported. Once a victim files a civil suit or makes a criminal complaint against a trafficker, the Government will prosecute the case at no cost to the victim. The Governments of Nepal and India have also agreed to form a Joint Cross Border Committee against Trafficking in order to collaborate on investigations and more efficiently share information about traffickers. With these encouraging signals, Nepal is definitely making significant efforts to bring it into compliance with minimum international standards.

Trafficking involves a deep-rooted process of gender discrimination, lack of female education, widespread ignorance in the rural population, poverty, social exclusion and lack of employment and economic opportunities. These local level factors are in turn affected by the macro-level social changes, low economic growth and weak governance and lack of enforcements of anti-trafficking instruments within the country which has contributed greatly towards the increased numbers of trafficking victims over the past few years.

Anti-trafficking coordination is a serious issue. The legislation of 1986 does not criminalize the separation of minors from their legal guardians with the intent of trafficking. Trafficking children out of Nepal may not be prosecutable as a crime until it is too late. Strengthened law enforcement
and prosecution of traffickers is critical because the crime remains a high profit and relatively low-risk transnational criminal enterprise. Improving coordination among law enforcement officials and NGOs serving victims ensures that traffickers are detected and punished, and that victims are afforded the protection and assistance they need to rebuild their lives. What is also needed is interactive training for border officers, police, prosecutors and judges. Border officers also need in-depth instruction on recognizing potential trafficking situations.

Several types of projects in these areas however have had little impact in monitoring the vices along the 1,740 mile-long open border between India and Nepal in the trafficking scenario. Nepal's open land border with India does not allow for stringent monitoring. However, efforts persist with border officials receiving training from non-governmental and international organizations on how to recognize potential trafficking victims. Former trafficking victims also patrol alongside border officials and help them spot potential trafficking situations. Nepal is a source country of women and girls trafficked primarily to India for the purposes of commercial sexual exploitation and debt bondage. While most reports identify these facts, they fail to recommend effective regulation of the international border. Often, monitoring efforts are not helpful in the case of an open international with a strong network of police, politicians and organized criminals profiting from the trafficking. In addition, the ongoing Maoist insurgency has used violence to wrest control of remote areas from the Government from where most trafficking victims originate. The insurgents have also forcibly conscripted girls and boys. But these problems could be gradually sorted out if the international border is adequately regulated and guarded.

The objective of the Office of the National Rapporteur on Trafficking in Women and Children, which was established in December 2002 as an integral part of the Commission has the objective of securing conceptual clarity on trafficking and related issues (illegal migrant status, exposure to HIV /AIDS, etc); monitoring the incidences on trafficking to galvanize public opinion; coordinating national, regional and international efforts to combat the crime of trafficking, and generating high-level commitment to efforts aimed at improving the human rights situation of women and children. Its responsibilities are -

- To work with NHRC on trafficking and related exploitation;
- To develop expertise within the Commission for research and public information;
• To develop procedures for \textit{suo moto} action as well as solicit, receive and act upon complaints of trafficking including violation related to recruitment and transportation;

• To review linkage between trafficking and HIV/AIDS and advocate for the rights;

• To review linkage between trafficking and illegal migrant and advocate for the rights of women and children victimized as illegal migrant;

• To promote and effective working relationship between the NHRC, Nepal and its counterparts in South Asia and other countries;

• To keep abreast of developments in the regional and international arena to address HR violation of trafficked women and children;

• To liaise with Joint Initiative against Trafficking (JIT) project, the Government and civil society to monitor the existing legal framework including an evaluation to which the existing framework meets the Nepal's international legal obligations;

• To develop and implement a plan for strengthening the legal and operational framework and its implementation;

• To communicate with relevant implementation and enforcement mechanisms;

• To hold consultations with GOs and Civil society;

• To advocate for implementation of HR standards for the treatment of trafficked persons in prevention, rescue and reintegration as the state obligation, and

• To liaise with international mechanism for supervision and investigations in order to enhance the relevance, accuracy and effectiveness of international scrutiny.

The success of ONR depends on the extent it is able to impact upon the prosecution of the trafficking offenders, the protection of the actual or potential victims, and prevention of this heinous crime through necessary public awareness campaign including radio programs and dissemination of booklets, pamphlets, and billboards. It needs to strengthen its relationship with the Ministry of Women, Children and Social Welfare (MWCSW), and garner support for local, regional, and national information campaigns on trafficking. As a pilot program, the Government has established "Village Vigilance Committees" in some districts to train local residents to recognize trafficking and alert authorities. The MWCSW publishes a newsletter and operates a program in 47 districts to emphasize the importance of sending children to school, a key component of the Government's campaign to eliminate child labour. The Ministry of Labour
requires all workers travelling overseas to attend an orientation session explaining worker rights and safety issues. Government-initiated income generating projects have been introduced in 3900 villages; those projects include providing micro credit loans, introducing savings programs, and encouraging female entrepreneurs. Such measures seek to curb the supply side of trafficking by reducing rural poverty.

Since its establishment, ONR has shared its work plan with the human rights and trafficking, and women and children related-related organizations. It has also consulted with the UN Task Force and INGOs active against trafficking to discuss on the work plan. Interaction programmes are being organized in different districts, and with several sectors like media professionals, law enforcement officers, social activists, victims and NGO groups. Resource persons have included officials from the Government, semi-government and non-governmental organizations, accompanied also by empowered survivors and media persons. Its activities are fully coordinated with the UNDP coordinated JIT Programme – which has been crucial for the establishment of the ONR office at the Commission.

With a view to gather information on complaint handling, case-filing and sharing experiences with its counterpart in India, the Nepalese NHRC paid a visit to the Indian Human Rights Commission and organized a meeting to discuss on the possible areas of cooperation on the issue of cross border trafficking. During the meeting, the National Rapporteur gave a brief overview about the problems of trafficking in Nepal and about various programs undertaken by the Government and NGOs at grassroots level. She also highlighted the National Plan of Action undertaken by the Nepalese Government to combat trafficking. During the meeting, both the commissions agreed on the areas where they could work jointly. The agreement also explored possibilities in the area of cooperation between the NHRCs of both countries for combating cross border trafficking. Follow-up meetings will be carried out in the near future.

With the approval of National Human Rights Commission, a Policy Steering Committee and a Technical Committee has been formed to facilitate policy and technical support to the Office of National Rapporteur on Trafficking.73

73 The Technical Committee comprises of National Rapporteur as Chairperson, National Project Manager of JIT Project, Representative from NGO Federation, Representative, Representative of Home Ministry, Representative of Labor Ministry, Representative of Women Development Department, Representative of
Treaty Compliance Structures

One of the major areas of capacity development regarding national human rights institutions revolves around treaty compliance structures. Nepal is a party to many human rights treaties or international conventions. The effective implementation of international obligations stemming from these treaties or conventions is of major importance to the efforts being made in the country to promote respect for and observance of human rights and fundamental freedoms. All violations of human rights guaranteed by local legal regimes and international obligations arising from our commitment to the treaties or international conventions must be properly addressed whether they are deliberately perpetrated or as a result of lack of awareness; whether they are weak structures or have insufficient governmental resources.\(^{74}\)

Additionally, Nepal has reporting obligations under different human rights treaties or conventions. These must be complied according to the terms of the concerned instruments, which set out related procedures to that effect. The first and foremost readership of the related report is the relevant United Nations Committee. It is therefore important to follow the specific reporting guidelines established for each treaty. Secondly, the entire international community that would have access to the reports through the OHCHR will also have the opportunity to read them. Finally, the Nepalese people also have the right to know what their government has reported about the status of implementation of obligations under a particular treaty.

National self-assessment is critical for an honest appraisal of the domestic situation with a view to improve domestic implementation. Reporting also helps establish baseline surveys that assist in gauging progress over time. This presentation to the international community is an important objective, especially given the international community’s particular and ongoing interest in the human rights situation. There is an inevitable tendency for Government reports to focus on positive developments and policy statements. That is understandable as long as it does not become mere

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Social Welfare Council, Representative of Women Police Cell were declared members while and Consultant of ONRT as Member Secretary.

\(^{74}\) This section is based on the author's background paper presented in a Seminar on Reporting to Treaty Bodies organized by National Human Rights Commission on November 16, 2002 at its Convention Hall in Lalitpur. The Seminar was participated by Chief Secretary of His Majesty’s Government and Secretaries and representatives of 15 other Ministries.
propaganda. The best method is to adopt a ‘strengths and weaknesses’ approach which admits that a problem exists and seeks to identify means of resolving it. It is therefore necessary to involve civil society and the stakeholders in the preparation of such a report, thereby achieving a degree of openness.

Content of the report is also important. A balance needs to be achieved between legislative reports and journalistic reporting. The report has to be rigorous but also readable. One problem developing countries often find is the dearth of relevant statistics. While statistics are useful, they are only a tool in better understanding the situation. Verbal descriptions, case studies and relevant anecdotes may also convey the necessary information. The key is to establish a system that collects relevant information steadily rather than trying to retrieve all the information when the report is being drafted.

There is always a need for political commitment and political ownership of the report is important, as ultimately ministers have to defend its contents. The multi-faceted nature of human rights and the broad spectrum of human activity covered means that many different areas of Government are involved. It is important to build up good habits of working well together and meeting timetables in fulfilling treaty-reporting obligations.

Reporting under some treaties are easier and some others difficult. But in all cases, reporting involves serious work calling for information sharing, open access and other good information management practices. The report required under International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most difficult to draft because it deals with such a broad range of issues. Education, health, labour and social welfare issues span a large part of the life of a nation and a large segment of the Government’s activities and it is thus difficult to produce a report that gives a succinct overview as well as necessary details. The ICESCR report also tests bureaucratic co-ordination as the activities covered fall to numerous Government departments. Another reason for the sensitivity of the ICESCR report is that it touches on issues close to daily lives of ordinary people. Human rights activists are rightly concerned with the issues of civil and political rights but every parent is interested in education issues and every wage earner is interested in labour issues and the entire community is interested in health issues.

Ultimately, therefore, the ICESCR report can be a very political document. Sometimes, there is a tension within the Covenant between articles that are to be realized progressively and those that are immediately implementable.
Many important provisions have immediate and binding application and the ICESCR committee would be looking to the implementation of these provisions. They include –

- Article 3 – equal rights of men and women to enjoy economic rights
- Article 7(a) (I) – equal pay for equal work
- Article 8 – the right to form trade unions
- Article 10(3) – measures for the protection of children
- Article 13(2) (a) – free and compulsory primary education
- Article 13 (3) – parent’s right to choose their children’s schooling
- Article 13(4) – the right to establish educational institutions
- Article 15(3) – freedom of scientific research and creative activity

In relation to those provisions that are to be progressively realized, the Committee would be looking for policies to achieve that result and evidence about the implementation of those policies. The report need not demonstrate that the economic rights of the Nepalese people are all being met, but rather that a process moving towards that end. As such, reporting under the treaty obligations should not be taken for granted.

While a detailed study needs to be done, a cursory review of the existing situation of treaty reporting procedures may be summarized as follows:

- Nepal does not have an all-time policy paper on treaty reporting obligations. The Government has taken decisions in this regard almost on an ad hoc basis; and there is no discernible trend.

- Under some treaties some focal ministries are appointed to perform the role of reporting. There are still some treaties for which nobody is responsible so far. For example, the Government has not specified who will be responsible for making reports under International Covenant on Civil and Political Rights (ICCPR) which Nepal had ratified in 1991.

- Even where focal Ministries are appointed, there are no guidelines on how to work on the report; who will do the basic works; how such works will be reviewed; and how the stakeholders will have the opportunity to strengthen it by offering their comments or insights on their contents? Generally, it is seen that the report prepared by an outside consultant has been submitted to the concerned treaty body without proper legitimisation process.
There is a general problem of integration of information in the submitted reports due to lack of an integrated process.

These reports fail to clearly identify responsibilities undertaken by concerned ministries, and the timetable for execution or accomplishment.

Once reports are done, they are sent to the Ministry of Foreign Affairs, which has the responsibility to maintain all outside contacts of the Government, but which largely acts like a forwarding agent to the treaty bodies in the present case.

The Ministry of Justice, which is in principle the premier ministry dealing with international law, treaties and human rights, does not have any role in the process. Some focal ministries contact them for their inputs in the matter of law and legislative programs, but that obviously is not a general practice.

The most obvious issue is the huge backlog in Nepal reports due under various treaties.\footnote{Note that there is no provision which enables delinquent states to be censured, other than by Committees noting the delay in their annual reports, and by repeated and so far ineffectual calls on the part of the United Nations General Assembly.}

The Commission is the only independent statutory body to protect and promote human rights in the country. Apart from other important responsibilities, the Commission has been asked by law to “study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty’s Government for effective implementation of the related provisions.” It does not have a direct role regarding reporting to treaty bodies under the obligations of the Government. As an institution, it acknowledges that the state must fully assume its responsibilities to uphold human rights, and reporting under the treaty obligations fall under these responsibilities. It urges the state to bring international human rights norms endorsed by the Government fully to the people and to advance its national protection system by calling on the state to integrate and implement the international norms that Nepal has voluntarily accepted through treaty ratification.

As the existing situation hindered the Commission from performing protection and promotion roles according to the international trend, the
change was necessary. The protection role of the Commission is one of its core functions and one that calls for measurable results. The importance and effectiveness of the Commission’s protection work is evidenced by the ever-increasing size and sophistication of its system of special procedures. However, protection goes hand in hand with promotion and we must stand ready to respond to the reports to be submitted by Government, in particular as an independent critic to these reports. Equally, the Commission must live up to its responsibilities and be prepared to call an abuse an abuse whether it is under the local law or the law of treaty.

In a bid to assist the Commission to develop the capacity to conduct high quality human rights oriented analysis of legislative proposals, draft laws and existing legislation, in particular with regard to Nepal’s international human rights obligations, and to provide high quality policy advice to the Government on human rights matters, the Capacity Development Project has been working to identify priorities and develop research and advocacy policy, strategies, and a medium-term work plan for legislative review, research and the provision of human rights policy advise with assistance of short-term national and international advisers (or staff from other national human rights institutions) with practical experience in legislative review and reform, and the provision of human rights policy. It has been conducting training of Government officials and NGO representatives on reporting to treaty bodies under international human rights instruments facilitated by a short-term international consultant and national resource person. Training has already been completed under the Convention Against Torture (1984) and International Covenant on Civil and Political Rights (1966) and on the remaining four major human rights instruments which Nepal has ratified are to be done within 2005. There is also a provision for study-tours for the head of the Legislative Assistance Division of the Commission and other staffs to gain experience in carrying out policy and legislative review responsibilities of other national human rights institutions. The Danish Institute for Human Rights is working with the Commission in this regard.

It would not be possible for the Commission to undertake these things unless the roles and responsibilities of Governmental departments, and the officials working under them were clear. At present, the Ministry of Law, Justice and Parliamentary Affairs has an International Law, Treaty and Human Rights Division (ILTHRD) which takes care of all issues falling under its name. These issues range from providing opinion to the Government on international law and giving it advice and counselling services on treaties being negotiated, drafted or signed. The section also has a role as to human rights or other type of treaty reporting obligations.
A Publication of the Ministry of Law of 1997 lays down the following responsibilities of the Division:76

- Give representation in the negotiation of any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party;
- Draft any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party, consolidate such treaties or agreements, and advise His Majesty's Government to that effect;
- Give opinion, advice or consultations to His Majesty's Government in the matter of signature, accession, acquiescence or acceptance of any bilateral or multilateral treaty or agreements to which the Kingdom of Nepal or His Majesty's Government is going to be a party;
- Furnish advise to His Majesty's Government on reservations to be made on multilateral treaties;
- Be the central depository of all treaties to which the Kingdom of Nepal or His Majesty's Government is a party;
- Provide legal opinion on loan agreements to which the Kingdom of Nepal or His Majesty's Government is a party;
- Get treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party published on Nepal Gazette;
- Get treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party published on the Nepal Treaty Series;
- Report on behalf of His Majesty's Government on the implementation of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is a party;
- Give consultations to His Majesty's Government on negotiation of contracts, bids or agreements, their drafting, examination of contents and signature;
- Advise the Government on national outlook to be taken by it in the process of preparation of multinational treaty or conventions;
- Give advice or opinion to the concerned entity of the Government as to the activities to be undertaken by it due to the legal obligations undertaken by the Government by virtue of being party to any multilateral or bilateral treaty or agreements, and

- Take necessary action in the matter of any legal issues arising out of any treaty, agreement or contract to which the Kingdom or His Majesty's Government is a party.

The list also includes everything related to international law. It is the most relevant divisional office in the existing governmental set up to take on the role of coordination in this regard. The Section is equipped to understand international law and treaty regime by virtue of its long experience in this area, giving it in-built strength to assume this role. It can also clearly identify responsibilities for contributing different sections of the report, and a timetable for its review and update. The focal point Ministries might submit all reports to it, keeping back the legal and legislative portion with the Ministry of Law, Justice and Parliamentary Affairs to work on. The Ministry, however, is not an expert of all subjects falling under international human rights treaties, except for the matters related with law and treaty obligations, and it would thus need principal contribution from the focal Ministries and/or other specialized agencies of the Government. At present, this section has one Joint Secretary, 4 under secretaries, 3 section officers, and a few junior staffs. To meet the increased burden, the Ministry can ask the Government to provide few additional officers.

What is urgently needed is a policy paper on treaty reporting obligations with a clear cut instruction to all Ministries to abide by treaty reporting schedules according to the terms of concerned treaty; raise awareness of the Ministries about the range of treaties to which the country is a party and the obligations imposed; determine focal ministry for reporting under each human rights treaty or conventions ratified by Government; appointment of the Ministry of Law, Justice and Parliamentary Affairs as the coordinating Ministry for all treaty related reporting works; guidelines as to how to work on the report; who will do the basic works, how such works will be reviewed, and how the stakeholders will have the opportunity to strengthen reports by offering their comments or insights on their contents.

It is absolutely necessary to make the reporting work teamwork based, and the tradition of hiring an outside consultant to do all these works should generally be discontinued. Also necessary is to review the processes followed in the preparation of periodic reports with a view to ensuring compliance with relevant guidelines, improving the quality of description and analysis and limiting reports to a reasonable length, taking due consideration of the relevant provisions of those instruments.
A professional arrangement is necessary to strengthen collection procedures; clearly identifying responsibilities for contributing different sections of the report, and a timetable for its review and update. These reports also need to clearly identify responsibilities undertaken by concerned Ministries, and the timetable for execution or accomplishment. The existing practice of Ministry of Foreign Affairs as the exit-point for the report should be continued.

Also necessary is to foster coordination and cooperation between focal point agencies and the Ministry of Law, Justice and Parliamentary Affairs. Information sharing, open access and other good information management practices also are needed. The report should be compiled to a timetable that meets both international needs and national information needs for other purposes.

Following a NHRC sponsored seminar on *International Human Rights Reporting Obligations of His Majesty's Government*, the Chief Secretary has decided that henceforth, following ministries will be entrusted with full responsibility to present periodic reports on the following conventions:

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<td>Ministry of Local Development</td>
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<td>3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</td>
<td>Cabinet Secretariat responsible for writing and coordinating with all Ministries</td>
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<td>5. International Covenant on Civil and Political Rights (ICCPR)</td>
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<td>6. The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)</td>
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The arrangement has been sanctioned by Chief Secretary, His Majesty's Government.
All abovementioned ministries shall select a department within the ministry responsible for the reporting work. The Ministry of Law, Justice and Parliamentary Affairs shall be entrusted with the responsibility of coordinating with the abovementioned ministries; ascertaining whether the draft proposals are in line with related conventions; requesting the respective ministries for rewrites if required; providing objective viewpoints on the topics related to legal, judicial and legislative aspects in the reports as per the conventions.

In the case of entrusting a particular ministry with assignments on any issue regarding the conventions, the Ministry of Law, Justice and Parliamentary Affairs shall entrust the responsibility to the particular ministry.

The Ministry of Law, Justice and Parliamentary Affairs will make necessary revisions and enhancements on the reports and only then send the reports to the Ministry of Foreign Affairs to send the reports to institutions concerned with the respective conventions.

While preparing the reports, the appointed ministry will arrange for the representation of other related ministries as well as non-governmental institutions or civil society. If necessary, it is also important to make arrangements for a temporary committee to prepare the reports. The ministry presenting the particular report will be responsible for the implementation of duties and policy changes in His Majesty’s Government on the basis of such reports.

The custom of sending all types of reports and follow-ups on the reports to institutions concerned with international conventions through the Ministry of Foreign Affairs will be maintained. With the creation of such a framework or structure, the National Human Rights Commission has started to objectively work within its field.

Also, it has been easier for the Commission to decide on selecting particular officials from particular ministries to provide theoretical, practical and technical training of treaty reporting. The tables below show the list of international instruments ratified or acceded by Nepal before and after 1990.78

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### International Instruments Ratified or Acceded Before 1990

#### I.A: United Nations Conventions

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Instruments</th>
<th>Date of Ratification (R) or Accession (A)</th>
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<tbody>
<tr>
<td>1.</td>
<td>Slavery Convention, 1953</td>
<td>7 January 1963 (A)</td>
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<tr>
<td>2</td>
<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery, 1956</td>
<td>7 Jan. 1963 (A)</td>
</tr>
<tr>
<td>4</td>
<td>Convention on the Elimination of All Forms of Racial Discrimination, 1965</td>
<td>30 Jan. 1971 (A)</td>
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<tr>
<td>6</td>
<td>Convention on the Political Rights of Women, 1952</td>
<td>26 April 1966 (A)</td>
</tr>
<tr>
<td>7</td>
<td>International Convention Against Apartheid in Sports, 1985</td>
<td>1 March 1989 (R)</td>
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#### I. B: International Labour Organization (ILO) Conventions

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<thead>
<tr>
<th>S.N.</th>
<th>Instruments</th>
<th>Date of Ratification (R) or Accession (A)</th>
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<tbody>
<tr>
<td>1</td>
<td>C 14 Weekly Rest (Industry) Convention, 1921</td>
<td>10 December 1986 (R)</td>
</tr>
<tr>
<td>2</td>
<td>C 100 Equal Remuneration Convention, 1951</td>
<td>10 June 1976 (R)</td>
</tr>
<tr>
<td>3</td>
<td>C 111 Discrimination (Employment and Occupation) Convention, 1958</td>
<td>19 September 1974(R)</td>
</tr>
<tr>
<td>4</td>
<td>C 131 Minimum Wage Fixing Convention, 1970</td>
<td>19 September 1974 (R)</td>
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### International Instruments Ratified or Acceded After 1990

#### 2.A: UN Conventions

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<thead>
<tr>
<th>S.N.</th>
<th>Instruments</th>
<th>Date of Ratification (R) or Accession (A)</th>
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<tbody>
<tr>
<td>2.</td>
<td>International Covenant on Civil and Political Rights, 1966</td>
<td>May 14, 1991 (A)</td>
</tr>
<tr>
<td>5.</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.</td>
<td>May 14, 1991 (R)</td>
</tr>
</tbody>
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79 HMG Cabinet on 31st January 2001 decided to ratify the CEDAW Optional Protocol and has already proceeded for the deposit of intention to the United Nations Secretariat.
2.B: ILO Conventions

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<tr>
<th>S.N.</th>
<th>Instruments</th>
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<tbody>
<tr>
<td>1</td>
<td>C 98 Right to Organize and Bargaining Convention, 1949</td>
<td>November 11, 1996(R)</td>
</tr>
<tr>
<td>2</td>
<td>C 138 Minimum Age Convention, 1973</td>
<td>May 30, 1997 (R)</td>
</tr>
<tr>
<td>3</td>
<td>C 105 Forced Labour Convention, 1930</td>
<td>January 3, 2002 (R)</td>
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<tr>
<td>4</td>
<td>C 144 Tripartite Consultation (International Labour Standards) Convention, 1976</td>
<td>21 March 1995 (R)</td>
</tr>
<tr>
<td>5</td>
<td>C 182 Worst Form of Child Labour, 1999</td>
<td>January 3, 2002(R)</td>
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Monitoring National Human Rights Action Plan

Nepal's commitment to develop a National Human Rights Action Plan (NHRAP), the participatory process of its development and its approval have placed Nepal among the leading countries in fulfilling the commitments made at the Vienna World Conference on Human Rights in 1993.

His Majesty's Government, with the help of United Nations Development Programme is soon to launch the National Human Rights Action Plan (NHRAP). The plan was formulated within the framework of the global Human Rights Strengthening (HURIST) programme of UNDP - Oslo Governance Centre. Window 1 of HURIST aims at testing guidelines for the development of national human rights actions plans. The process also benefited from the sharing of advice and experiences within the HURIST network. While the Cabinet Secretariat of His Majesty's Government was the executing agency, the UNDP Office in Kathmandu fulfilled project oversight functions characteristics of the UNDP national execution modality. When the national counterparts had gained sufficient experience in implementation of the project and UNDP's assistance was less vital, UNDP's involvement concentrated on public statements by the Resident Representative in support of the development and subsequent implementation of the Action Plan. The UNDP deliberately limited its involvement in the process in order not to hamper the leadership and

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80 Other countries involved in Window 1 of HURIST include Moldova, Mongolia, Cape Verde, Mauritania, and Lithuania.
commitment of national entities. A member of the National Human Rights Commission served as one of the members of the Steering Committee to supervise that work with other important stakeholders, while the drafting work was going on.

The Plan is a major achievement. While there are comments that the plan is not specific in its approach and with little quantifiable indicators, the feeling of the Commission was that more of its inputs should have been included in the drafting process than what has been the case. The Commission already overburdened by the conflict related human rights matters was not able to exercise enough influence in the matter, but nevertheless, should have asked for more substantial role. The assignment of overall responsibility to an inter-agency working group did not prove to be an effective arrangement due to insufficient concentration of accountability and commitment for the task. In addition, the 25 months allocated to the UNDP project proved to be too short to accommodate the participatory process. Linkages with other national development strategies needed to be effected in integrating a human rights approach with other national policies.

Nonetheless, the document was developed choosing public opinion as a primary basis for identifying priority human rights issues. It had also assured broad-based public involvement in the process of development of the Action Plan. The primary basis was to be the opinion of the public; the encouragement of protection of the rights of vulnerable groups; areas of improvement identified by international human rights organisations had to be tackled. The decrease in intensity of UNDP's involvement in developing the Action Plan helped to strengthen the leadership and commitment of national entities.

Significant improvement in the human rights situation is only possible if a system of monitoring the human rights situation in Nepal is established according to this action plan, and a mechanism for continuous dialogue between the authorities and the civil society on the improvement in the human rights situation is developed. That of course should be the responsibility of the Commission. Since the Commission has already declared its Strategic Plan, it can monitor the action plan in its strategic context; without of course ruling out the involvement of other institutions. In order to contribute to further progress in respecting, protecting and fulfilling human rights in Nepal as well as to strengthen the potential of using Nepal's experience in the international context the UNDP in Nepal might consider supporting the Nepalese authorities in the implementation of the Plan.
It is unfortunate that the visiting HURIST team in early 2004 had to reach an unreasonable conclusion that the NHRAP could not be implemented at present. The Commission might consider taking up the issue with HURIST and open the file again.

**Non-governmental Organisations**

Non-governmental organisations which provide advice on human rights issues, take test cases, conduct research or campaign would very much hope that the Commission will complement their work and not seek to replace it. A constructive and cooperative relationship will be essential. Commissions overseas have conducted research jointly with NGOs, drawn on their expertise in responding to draft international conventions, and relied on NGO assistance in encouraging individuals to give evidence to their inquiries. The UN guidelines on establishing Human Rights Commissions stress the importance of working with NGOs. The Paris Principles provide that:

In view of the fundamental role played by non-governmental organisations in expanding the work of national institutions, national institutions shall develop relations with non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

The Commission is younger than most of the established human rights NGOs in Nepal. The contribution which they make to human rights protection will always be of vital importance to the Commission’s work. This is the reason that the links which the Commission can strengthen with them will be a crucial determinant for its effectiveness. Their flexibility and dynamism can rarely be matched by statutory bodies constrained by tighter mandates and accountability procedures. They have a closer and trusting relationship with grassroots communities. NGOs, however also operate within constraints and cannot fulfil all of the roles which can be fulfilled by a statutory body like the Commission. The Commission, by providing an official endorsement of the very notion of human rights, can also create a space within which human rights groups in civil society can operate effectively.

While NGOs can operate on many human rights fronts, they don’t have enforcement powers. Enforcement may require the exercise of legal powers - such as those needed to ensure cooperation with an inquiry - and
it would not usually be appropriate to invest a non-public body with such powers. Similarly, individual NGOs are unlikely ever to have the resources or expertise necessary to provide legal assistance to individuals on the wide range of human rights cases which may arise. They can neither conduct the range of research (since most are limited in their respective areas of expertise), nor engage in the extensive promotion work needed. Public bodies or those under the control of Government continue to need advice and training on the new standards which they will be expected to meet if they are to avoid challenge in the courts, standards which will change as the law develops. NGOs are unlikely to be accepted by several public bodies as their principal source of good practice guidance, even if the NGOs had resources to provide that service. They may be constrained, for instance by the sources of their funding, to avoid unpopular or controversial issues which ought to be taken to court.

The Commission needs to ensure necessary space for the growing NGO sector, reserving for them areas in which the Commission will have a limited role. In fact, collaboration between the Commission and NGOs and other civil society organizations is a two way process. Human rights NGOs are a source of knowledge, expertise and public legitimacy that can be of benefit to the Commission. For example, the Human Rights Year Book of INSEC is not only a reference work for INSEC and other NGOs but for the Commission as well. The competence that this organization has developed in coming out with such a standard work every year is something that needs to be assisted by the Commission as a national institution, rather than competing with it for the same job. It is in this spirit that the Commission has not spent much resource on police or army training in the junior level, on human rights literacy of the common folk, and other promotional work of general nature. This is one simple example, but there could be several projects that the Commission can leave for the organizations that can best do it.

With the Commission’s plan to open the regional offices, some of the partner NGOs of the Commission have become already suspicious. They think that the Commission is competing with them in key areas of their operation. While the Commission does not have such an agenda, it really needs to help them clear such confusions.

In many countries, quite too often, the relationship between national human rights institution and local NGOs have become way, if not downright hostile, because NGOs consider that a national institution has been set up to apologize for Government abuses and discredit their own work. This relationship in Nepal is quite fruitful because the human rights
NGOs and other professional organizations in the legal sector were crucial to pressurize the Government to support the move of establishing the national institution. A better institution has to thus come up with greater public legitimacy.

The Commission can also capitalize on the strengths of community-based organizations of other types. There can be regular consultations either through a formal consultative council, where civil society can have a broader representation, or through regular strategy meetings.

**Ethnicity and Discriminatory Social Relations**

One area that has lagged behind due to the excessive involvement of the Commission in conflict related human rights issues is the issue of ethnicity and discriminatory social relations in the Nepalese society. Recently, the Commission was bold enough to recruit some new officers from ethnic communities and disadvantaged groups for its regional offices under conditions of affirmative action. Similarly, the Commission has a plan to provide on-the-job human rights training to thirty young graduates from ethnic communities over the next three years, who will be gradually integrated in the Commission's outreach programmes. The objective is to create human rights professionals from such groups which so far lack participation in an important sense. The educational and promotional programmes of the Commission continue to focus on issues of non-discrimination, particularly the Convention against Racial Discrimination, and the rights of minorities and indigenous people. But they are not enough in view of the magnitude of problems that this country has.

The promotional activities of the Commission nevertheless advocate that people of all ethnic groups must respect one another, in all their diversity of belief, culture and language. Differences within and between ethnic communities should be neither feared nor repressed, but cherished as a precious asset of the nation. Instead of allowing the diversity of ethnicity and culture to become a limiting factor in human exchange and development, they must refocus our understanding and discern in our diversity the potential for mutual enrichment. This should be the voice of modernity, the vision for the 21st century. It is, in essence, a statement of shared vision for an inclusive, non-racial and non-discriminatory Nepal.

The issue of ethnicity must be studied in the specific context of Nepal. Among these is the issue of helplessness in terms of formal equality and limited partnership of many ethnic groups in the political society. Nepal’s liberal political system is yet to be mobilized in favour of many ethnic communities who presently have equal rights, yet continue to suffer from a
history in which there were unequal entitlements. The capacity of these communities to stand on their own feet is suspect for some more years. Securing the full, active, free and meaningful participation of excluded groups in the governmental system means recognizing their additional rights in law, policy and practice. A mere concept of formal equality has not helped.

Moreover, it needs to be made clear how the state is going to support their cause of language, culture and religion. We need to ask whether popular sovereignty, political equality and liberty as far as they relate with these communities are enhanced or diminished by the way the Government, Parliament, the Supreme Court and local government units have operated over the years. While recent development in technology and communication, coupled with the globalisation of economies have benefited societies in many ways, in some instances they have also contributed to the aggravation of existing inequalities and the generation of new forms of discrimination and intolerance. This is true of Nepal as well.

On the social level, many ethnic communities deserve the right to education along with positive efforts from the state to recruit their educated candidates for jobs, promotions and further educational opportunities. They need assistance in sharing opportunities for self-government, local decision-making, and accountability. They need a positive environment to influence public opinion, the mass media, interest groups, and political parties. Especially, the national political parties must become more representative of the nation and its ethnic makeup. This will help make popular sovereignty possible. The representatives of the backward or deprived communities should be fielded by these parties during elections. Candidates from the comparatively advanced communities might find it an embarrassing arrangement, but it will make the country stronger. Additionally, candidates from all under-represented communities should find representation at all levels of political appointment to fill up senior positions in constitutional bodies, the civil, judicial and military arms, and governmental corporate entities.

All smaller ethnic communities in Nepal need to be assisted by the state to stand with their social or political movements. Social movements can be the political instruments of excluded groups or political outsiders. Movements often help those who are outside the mainstream to gain a hearing from the public and political decision makers. It is the responsibility of the Government to devise structural and policy rules that will manage the voice of the underrepresented communities. Maybe the existing rules when they were devised were neutral, however, they were not neutral in their effect. Due to the insensitiveness of the Government
and major political parties, these rules created ethnically fixed winners and losers because, compared to other possible rules, they benefited the interest of some ethnic groups and harmed the interests of others. Some discrimination is all too familiar. The examinations conducted by the Public Service Commission (PSC) for the recruitment in civil or judicial bureaucracy of the country and political appointments made by the Constitutional Council might be taken as suitable instances. The problem in fact is not with the rules as such, but with these bodies to create a situation in which the outcome does not look biased. If the outcomes of the rules are inherently biased, they must be subjected to change. In this context, change means change by the force of necessary positive laws. The rules of the Government change not by magic but because the people and Government officials make choices. It is not too late to think of these choices.

These indicators call for serious national debate and the Commission has to take the lead. While Nepal has built an impressive array of laws, institutions and independent watchdog groups, the people who suffer most from the denial of their human rights are often unaware of their rights, and beyond the reach of these mechanisms. While outright discrimination has been defeated by the democratic constitutional system, affirmative actions are necessary to overcome existing inadequacies, reverse situations, and intolerance. Affirmative restrictions for about ten or fifteen years in the case of those ethnic groups, who already have adequate level of representation in the state system including Bahuns, Chhetris and Newars, may be thought of as one of the modules. It is very strange that the majority of communities in Nepal are by far more positive to this cause than anywhere in the region or abroad, but the political elite of the country has yet to give it serious thought. Had the subsequent Governments after the restoration of democracy in 1990 been serious towards these issues, there would have been no necessity for new laws and institutions to achieve them by restructuring the present arrangements. But the delay, and more than that the insensitivity of the ruling elite and the major political parties, has already given a strong basis for structural change.

The seriousness of these issues is well known, as are the threats they pose to the democratic and social progress that has been achieved. Compare to the evils that many other countries have, our social evils are less cumbersome, and with some homework and political determination we can respond to them more effectively than many others on the line.

The Commission’s main business at this stage is, therefore, to look unflinchingly at the flaws in the legal regime Nepal has built. Building inclusive societies, where diversity is seen as an asset and not as a threat,
Building Capacity of National Human Rights Institutions: The Case of Nepal

requires much greater effort and collective action by the Government, non-governmental organizations, and the international community. To succeed, the Commission must start a process leading to constructive, practical, action-oriented strategies. Even some proactive formulations can be considered by way of constitutional amendment. Nepal needs a forward-looking document that acknowledges and builds on the past, but does not get lost there. It must be able to redirect public policy, and leave a lasting imprint on the workings of the institutions.

Much has been written about the weaknesses in the present system for combating discrimination, a situation arising from the piecemeal development of discriminatory policy and law within the country over many years. Discrimination in employment or in the provision of goods and services due to religion, age, sexual orientation or political opinion are not yet prohibited throughout the country. The ability of the Ministry of Local Development to deal with systematic discrimination is greatly hampered by their lack of proper powers of enforcement and their restricted power to take representative actions. Some of the limitations on the entity however, arise from their isolation from the rest of the governmental machinery. This has encouraged the impression that rights to equal treatment are minority concerns; that these bodies exist to protect the interests of particular social groups rather than promoting and enforcing human rights of concern to society as a whole. This also limits opportunities for combined action and the pooling of resources.

Media Strategy

The Commission has largely been successful in mobilizing the media sector, especially those run by private sector, in the protection and promotion of human rights. At times, these private media outlets have even carried the Commission materials at no cost. Most of them have few resources to pursue human rights stories and are happy to use Commission as a source of information which, more often than not, is critical of the Government and bolsters the media's own independent stand. The Commission regularly issues press releases on cases that may be of particular public interest, but more often, it is the media that takes the initiative in approaching the Commission. No doubt, it has expressed its gratefulness to the media sector for its support in disseminating the activities and views of the Commission.

A draft media strategy was developed in late 2002 and being implemented by the Promotion Division and other divisions of the Commission with the help of the Capacity Development Project. The success is notable. This has been extremely important for the Commission's public legitimacy.
It needs to be noted, however, that the media - official or private- have highly been selective in the contents distributed by the Commission, especially in conflict related human rights investigations and monitoring. They are more vocal in human rights violations committed by the Government side, but the Commissions views on abuses committed by the Maoists are not carried with equal strength. This might be because they feel the threat of Maoists more than the threats from other quarters. There are many analysts in the country, who think that the irresponsible response of the media to the Maoist violence in the beginning helped the Maoist movement expand with such a momentum. In other words, there is the view that the Maoists have achieved a status which they never expected to achieve because of immature response to their propaganda, and inability of the media to condemn violence in all forms. The international media, especially the Indian media also carries news of the Maoist movement without demonstrated objectivity. While the Commission has been largely objective in its approach, the media has not followed its approach impartially on all occasions. That has often invited sharp criticisms from the Government entities and members of the security forces, who have been voicing the concern that the Commission is sympathetic to the Maoists, and its approach towards the security forces is not balanced, citing media reports. In most of the cases, this comment has the basis on the behaviour of media outlet to focus on issues that attracts more readerships, making their reports lopsided.

In the fifth year of operation, it is now time for the Commission to review the structure, operating practice and systems of the Commission to ensure effective media and communications work; make specific recommendations for improvement and implement practical changes as agreed; prepare protocols to guide all such work and systems. This includes the finalisation of the draft media strategy. Strategically, it is now time to identify the key internal and external stakeholders; assess the potential of media and communications work to enhance NHRC's strategic objectives and develop a media and communications strategy in line with the organisation's Strategic Plan, which takes account of the organisation's current and expected development between 2004-2008; addresses the status of the Nepalese media and its approach to and understanding of human rights; utilises the international and foreign media to achieve leverage; addresses a range of promotion related needs from awareness raising to fundraising, and develop an internal communications strategy.

81 The author wishes to thank for the inputs of the inputs of Merilla von Lindenfels, Director, Communications Inc. Ltd., based in London, UK.
In practical terms, this involves a provision of direct and indirect training to the staff and members of the Commission and other human rights groups in the conduct of media and communications work. This also involves working directly with key staff and officials to provide 'on-the-job' learning and skill-sharing in the conduct of media and communications work, along with monitoring and guiding the day to day communications work of the Commission to ensure that it is compliant with the strategy and to achieving 'on-the-job' learning. This can help finalise the present draft media strategy and also give inputs to the specific recommendations for future development, including the establishment, if appropriate, of a professional media desk.

The job is very broad and exhaustive and could be handled in one of the following two ways- either through the appointment of a temporary member of staff with the Terms of Reference as set out, or as a consultancy with an external expert who will not undertake every area of work directly but rather guide some areas, lead others and take hands on responsibility for the rest. There are pros and cons to both approaches. With an in-house member of staff, the Commission can get a daily contribution, flexibility and, even allowing for 'on costs', a cheaper option. The Commission may not, however, find the calibre of person required, and it is easier for the in-house staff to become distracted by their immediate needs and it is also often more difficult for them to objectively identify and secure change.

With a consultant, the Commission can get the expertise it requires, a disciplined approach to delivery of the brief, a greater organisational openness to hear and accept recommendations and change and the flexibility to bring in more than one set of skills. The Commission does not, however, have someone physically with it on a daily basis, in this case. Nevertheless, a consultant is the best route at this point, as the start-up phase of a new project is often crucial and it is a period during which a consultant can add most value.

The aim is to establish an internal capacity to carry this forward without a consultant but generally consultants have the most to offer over the slightly longer term. On a purely practical point, experienced consultants of any worth tend to be in demand and the Commission may not be able to find one able to offer a concentrated burst of activity for few months. The project would benefit from less actual days of consultancy than the Commission might currently envisage, but it should be spread out over a longer time frame. In this way the Commission will have achieved much
what it hopes for by the end of, for example, a period of three months. Some work will still be outstanding and paced so as not to lose key parts of the organisation along the way. The Commission will then have support and monitoring over a longer time frame to ensure that the good work is not all lost and that anything which needs adjusting is given attention.

It is tempting to have one consultant to do everything for a project like this (effectively take on the role of an in-house person) but in terms of cost effectiveness and internal growth, it may not be the best approach. The extent of the project is such that it will be necessary to identify the work which the consultant can do and can add most value to and then identify that work which the organisation could undertake itself, building on the skills and disciplines imparted by the consultant. So, for example, rather than having the consultant do all the training, key members of staff are identified to receive 'training the trainers' coaching so that they are equipped to go out and spread media training with other human rights NGOs or members. In this way, in house skills could be acquired which remain even after the departure of the consultant, and officials and staff of the Commission in turn will have the capacity to train new members or staff in the future and will reduce the time commitment and therefore, cost, of the consultant.

The role of the media as a tool for human rights education is also important. As advertising in the media may be extremely expensive for a low budget organisation like the Commission, an effective media relation in the above light is very important.

**Promotional Strategies**

The promotional strategies of the Commission must be able to implement Article 9 of the Act which vests primary responsibility in the Commission to protect and promote the human rights of Nepalese people. In order to meet this challenge, a Promotion Division has been created in the Commission for promoting respect for human rights throughout the country as well as conducting education and training as needed, and for providing information on the activities of NHRC. The Promotion Division is seen as a crucial department for the Commission and capacity building of this division is also viewed as a major step towards capacity building of the Commission as a whole.

Some of the major functions of the Division, supported by the Capacity Development Project are: publication and propagation of human rights...
through education, sensitisation, training and awareness building programs; undertake research for human rights promotion; information dissemination; library and documentation; collaboration with non-governmental human rights organizations in promotional activities; and media advocacy. Programs in awareness building raise the level of consciousness on human rights issues. Similarly media campaigns, workshop/seminars, publication of brochures and newsletters, celebration of special events etc. are some of the major activities through which awareness is raised. Apart from attempting to raise the profile of human rights among the ordinary people, sensitisation and intensive training on different aspects of human rights are targeted towards educating various sectors of the groups in the society including political party functionaries, security forces, the judiciary and other government entities, elected representatives, the business community, trade union leaders, members of the arts and cultural circle, socio-economic development practitioners and religious leaders. Moreover, the help towards development of a human rights curriculum in the education system is one of the objectives of the promotion division.

Every year dozens of educational and training sessions are targeted at public servants, vulnerable groups, the formal education sector, NGOs and others in civil society. In many instances, the sessions for vulnerable groups were in areas identified by local NGOs. By July 2004, the Commission has already published more than a dozen human rights publications, and they are widely circulated in the concerned sector. It has also published a basic human rights question-answer book. Publications and pamphlets are distributed through libraries and, to a very significant degree, through NGOs. One of the particular groups targeted are children in the high school in the districts. Awareness groups led by the Promotion Division visit the districts each month. Apart from focusing on key human rights issues of the local area, they also receive complaints from the local people or their local target groups. However, in view of the limitation of staff and resources, the Commission is concerned about the danger of being overwhelmed with the complaints of wayfarers, or frivolous posers submitting irrelevant complaints, thereby adding unwanted burden to the Commission.

The Commission has not undertaken training or other educational activities for the civil or armed police or the Royal Nepal Army. The approach has been to focus on the senior officers of the security forces, who give instructions to the junior staff. The reason behind focusing more on the officers than the mass of security forces is thus clear. The
The Commission has on a regular basis called meetings with the security forces along with the officials of the Ministry of Defence and Home Ministry, or those in the key positions in a number of strategic sectors. They are also briefed on the new complaints received, and the behavioural or substantial responses expected of them. The Commission has also shown interest in looking into the human rights aspect of their training manual, and monitoring the training handled by army instructors themselves. In recent years, with the donor support, the army men as well as the civil and armed police are being subjected to human rights training to respond to the conflict needs. How far these activities percolate down to the consciousness of the ordinary security forces - or whether they are seen as an optional extra that can be safely ignored - is something the Commission is carefully watching.

Several training-of-trainers workshops have been organized by the Commission in the last two years. The aims have been to provide the participants with an improved understanding of human rights concepts, to give them skills to conduct training sessions and help them design templates for human rights training sessions for their respective sectors. The key to this approach is the balance between providing those being trained with a framework of human rights concepts and information and allowing them to develop their own training materials based on their understanding of the target group. There has also been a clear benefit in mixing trainees from widely varying backgrounds. Both the military and NGO activists, for example, have found it mutually beneficial to sit alongside each other in “training of trainers” workshops.

The Commission also runs advertising and public information campaigns through radio and television slots. Its slots on human rights violations by the practice of witchcraft and chhaupadi (physical seclusion of women in period) system have had a very powerful impact in discouraging such acts. Work on controversial issues such as witchcraft and practice of 'untouchability' is itself as much an aspect of human rights education as it is of the complaints process. Similarly, the documentary on Dalit rights has also been successful in creating awareness in equality of opportunity and non-discrimination issues. However, the most effective public campaigning has been through mass media by steering them towards coverage that may be reflective and explicitly educational on the multitude of human rights issues.

On one hand the NHRC has been working towards the promotion of human rights with a focus on creating a human rights culture within the
country and on the other hand the Commission has been actively propagating peace. Without lasting and sustainable peace, human rights cannot flourish in any country. The link between conflict prevention and the promotion of human rights and democracy is very strong and clear. Denying basic rights to people creates conflict and helping to guarantee those rights can prevent conflict arising in the first place. Time and again the Commission has been urging both the warring factions to declare schools as a Zone of Peace and keep the children away from the conflict. The Commission has been keeping a close watch on the State and the Maoists when it comes to rape, torture, disappearance, extra judicial killings, using of innocent civilians as human shields and recruitment of child soldiers. Several educational materials are on distribution from the Commission.

As stated above, on 10 March 2004, National Human Rights Commission (NHRC) recommended minimum immediate steps for human rights protection to His Majesty’s Government (HMG). These steps are based on trends indicated by the innumerable complaints, which NHRC has received, as well as the field monitoring it has carried out. Of the complaints it has received, over 90% are related to the armed conflict. The Commission has provided detailed guidance regarding a number of human rights issues to address the trends it has identified such as the human rights of women and children, freedom of movement and in particular, addressing impunity. The Commission has also emphasized to the Government that its mandate is to monitor compliance with human rights as an independent and autonomous body and to receive full co-operation of the state. In this connection the Promotion Division was seen very active in hosting various press conferences in order to disseminate the Minimum steps to the press, NGOs and the civil society. The minimum steps was also printed in Nepali and disseminated to all. This publication has been widely distributed within the length and breadth of the country.

Teams from the Commission have been travelling to various remote parts of the country organizing numerous awareness programs. These programs often took place at schools enabling to educate school children and their teachers on human rights and also on the working of National Human Rights Commission. Many a times essay competitions were held regarding human rights issues and time was also given to answers queries from the children regarding issues related to human rights. In addition to these

82 They include, for example, Human Rights Commission Act, Complaints, Action and Determination of Compensation Regulations; Human Rights Bulletins, Human Rights Question & Answer Book, Child Rights Brochure, Women’s Rights brochures; calendars, NHRC four year accomplishment publication; human rights postors, annual reports, reports on dalit issues.
standard awareness programs the Commission has also conducted other issue-based programs. Publications and the print media is seen as very effective tools in communicating human rights values and enabling to bring about a human rights culture right from the grass root level. Many a time publications have been customised in order to facilitate easy understanding of issues even at the remotest parts of the country. All publications are printed in Nepali. Attempts are being made to translate Nepali materials in Maithili, the second largest language spoken in Nepal. With a view to develop human rights culture by disseminating human rights education even among the foreign agencies and people, the Human Rights Act, 1997 and Annual Report have been translated into English. In this context, it has also distributed its bulletin, annual report, various regulations and wall calendars with human rights slogans to different associations as well as common people. Below are some of such publications:

The E-bulletin of the Commission is rightly recognized as the leader in the field of human rights. In fact this is the first bulletin of its kind in Nepal. Experts write articles from the Commission as well as external experts from a range of disciplines. The E-bulletin provides up-to-date information on important developments within the Commission. It presents current work in human rights research and policy analysis, reviews of related current affairs, and essays probing the fundamental nature of human rights. By providing decision makers with insight into complex human rights issues, the E-bulletin helps to define national human rights policies and also seeks to create awareness on the activities of the Commission in particular. The E-bulletin is designed to encourage thinking about human rights issues and to encourage actions that promote human rights within the country.

The Commission does not have a massive programme in public education, but it is an important aspect of its work. Increasingly, it has become apparent that the low level of complaints received by the Commission in non-conflict related areas is due to the lack of public awareness in many other key human rights issues including the educational, social and cultural rights. Consequently, public awareness programmes are being seen in a more integrated fashion as a means of increasing the Commission's interaction with the rural population.

**Administrative and Financial Issues**

It is of crucial importance for any organization to build the administrative and financial capacity on which its delivery capacity largely depends.
The focal point for administration and finance in the Commission is the Secretary. He is the leader of the rank and file below the Commissioner level, and is appointed by the King on the recommendation of the Commission. The Secretary is the instrument through which the Commission comprising of five Commissioners functions and implements the mandate of the Commission. The Secretary is generally a senior professional person, knowledgeable in human rights and law, able to run the Commission and activate and control all five operational divisions of the Commission. Early since its establishment of the Commission, and upon the restructuring that was accomplished in 2003, this position has been further strengthened. At present, the Chairperson and other Commissioners are not involved in administrative and financial matters of the Commission, and they function as a policy making body whose decisions are implemented by the Secretary with the machinery that he has at his disposal. As the Secretary is also the person who sets the agenda for the Commission meeting and briefs the Commissioners in all matters, he plays a key role in the NHRC machinery - both in policy level and other regular activities.

Currently, the Secretariat is being run by a senior attorney on deputation from the Office of the Attorney General of Nepal. Two secretaries were appointed in the past from the private sector, one after another, but both of them left before the completion of their terms. The next official was brought from the Government on deputation, but also returned within a short period of time. As such, not a single Secretary (with the exception of the Present Acting Secretary has stayed in office for more than a year. While the Commission is thinking of appointing a permanent secretary soon, the present acting secretary has been a part and parcel of many institutionalisation works going at the Commission for the past two years. By early 2004, however, the need of creating a mid-level management within the Commission and strengthening of the secretariat has already been acutely realized in a few distinct areas.

There is a growing realization within the Commission that the existing secretariat is under stress and this problem needs to be addressed immediately. The combined role of the empowered management structures are to act as the engine of the NHRC, motivating and advising both above (to the Commissioners) and down to the heads of divisions and staff.

There are some stakeholders who think it is high time to get a permanent secretary, or give a permanent status to the one who is currently discharging this responsibility. To strengthen the secretariat, and to make it
ready to take up the challenges of expanded monitoring and regional offices, what is immediately needed is the expertise at this level for quality control and improved methodology for human rights monitoring and investigations; legal analysis of human rights monitoring and other aspects of the Commission’s work; streamlining and improving the external communication of NHRC with the creation of a position of NHRC spokesperson, and improving upon the security of NHRC premises while also taking security measures for the safety of the Commissioners, staffs and NHRC representatives, along with assessments of technical aspects of conflict related human rights violations. The requirement of quality control and improved methodology for effective human rights monitoring and investigation is paramount because it is necessary to ensure that complaints handling, monitoring and investigation powers are used consistently and effectively, especially for follow up action for change, and powers of NHRC are reflected in the Commission’s procedures, regulations, manuals, trainings, software databases, etc. Similarly, capacity is necessary for structural analysis of the causes of impunity, torture, disappearances and etc., to strengthen the practical application of NHRC’s recommendation. Finally, the service of an expert to further help institutionalise the administrative and financial system at the Commission is also considered of crucial importance in view of the ongoing expansion of the Commission.

In the same vein, the Secretariat needs to have arrangements in place to analyse reports of monitoring (including complaints handling and investigation) findings by all parts of NHRC to distil legal conclusions and propose recommendations for NHRC to address the recommendations of the findings for the relevant actors. Legal expertise is also necessary so that there is a close association with the media machinery in the Commission to ensure clear and consistent direction for NHRC advocacy in terms of international human rights standards, humanitarian law and compliance with domestic law.

While these key requirements are important, it is absolutely important to fill up all vacant core staff positions in the Commission. In the absence of core staff, the job of institutionalising the secretariat will remain a challenge. Currently, there are 27 core staffs in the Commission apart from the Secretary and Commissioners. Of these, 15 are non-officers, having only supportive role. At least 2 officials are on deputation from the Government, but receive their salary from the Commission. They are seconded on open-ended arrangements. Core staffs are permanent staff exercising line functions, or responsibilities according to job description. They are included in the Commission’s organogram, and their employment
is financed from the regular budget approved by the Government. The core staffs receive their salary according to the scale accepted for the civil servants, which is insignificant when compared with the general market rate in the private sector, and when pension and other entitlements are also not included.

In much of the ongoing activities, including those that are related with protection of human rights in conflict, the core staff of the Commission is supplemented with contract staffs who exercise line functions according to the job description and such features as the Commission’s organogram. This lot also includes most of the staff of the regional offices. These staffs are offered time-bound contracts with the Government pay scale plus a seventy-five percent topping up. There is no provision for pension and other entitlements. The payment is done from the project funded by the concerned donor. The Commission intends to raise the salary of its core staff by seventy-five percent in due course and integrate these staff in the Commission, so that the capacity developed among them remains there. The prospect of this arrangement depends on the increase in the level of funding to the Commission from the Government and overheads generated from projects.

There are advisors who work with the Commissioners and the staff to build the capacity of the Commission, and to support it with advisory functions according to terms of reference approved by the Commission. Normally they do not perform line functions. They normally work with, or through designated NHRC counterparts, with the ultimate aim to transfer their skills. The current advisors have both the long term and short-term attachments. Consultants with short-term assignments aim at defined outputs. The UNDP coordinated advisors or short-term consultants receive their salary and benefits from the project according to the modality developed jointly with His Majesty's Government in the form of nationally executed project rules. It is expected that they will have no use in the Commission after their jobs are done successfully. All these experts are to be twinned with the Nepali experts to work at the secretariat with the help of core staff in the divisions.

During 2003, the Commission was provided service on various administrative and financial matters and help to modernize the institution including on developing a work plan for the Operations Division, facilitating rational scheduling of activities, promote participatory and open decision making practices in administrative and financial activities; oversee the procedures and recommend ways of addressing bottlenecks and follow-up to ensure that they are addressed, develop new systems or...
improvising the existing ones to improve organizational efficiency, and plan for human resource development. This also focused on leadership in assisting the Commission in implementing the outstanding administrative decisions; the newly developed financial regulations and accounting manual, and assistance in preparing the annual work plan and budget for the Commission with measurable targets for annual and multi-year plans and monitoring of the progress. Also extended was the help to supervise and ensure that all staff members fully comply with rules and regulations, including those related with procurement, inventory and vehicle use, and other matters; that disciplinary action is taken in appropriate cases, and proposing various administrative procedures and policies, implementing them, and reviewing their effectiveness for refinement. The staffs of the Operations Division were also given on-the-job training and orientation in administrative and financial process and procedures. An international expert continues to work in this area.

There is a sort of discontent among the core staff that they are not paid equally, although they are quite aware that the Commission is working towards this. The current strategy of increment of seventy-five percent to the existing pay scales is being used only in the case of project staff performing line functions. As a short-term measure, the Commission intends to use the project overheads at its disposal to augment the salary of core staff, but an alternative source of money is required to give it continuity. Additionally, a separate category of salary structure for the core staff at the Secretariat level is also needed. This arrangement may be undertaken as a mid-term measure which is long enough to institutionalise the capacity in the situation of conflict. Besides, the concept of an endowment fund can become an important means of achieving the financial sustainability beyond the project period.

While the NHRC remains understaffed, the problem of retaining staff has also been a serious problem. The Commission has provided excellent capacity building training to the staff including human rights training in Nepal and abroad, but it has been found that such staffs, once fully qualified and trained by the Commission, begin searching for more financially lucrative job opportunities based on their enhanced capacity, and consequently leave the Commission for better opportunities. As such, it becomes all the more important that the Commission seriously consider measures to retain such staff in which it has invested so much of its resources. Better financial incentives, including better pay, along with mechanisms for binding staff commitment to the Commission is therefore very necessary to increase staff retention.
The Commission is inadequately funded. For any organisation to be effective and credible, it must have appropriate financial support. In the case of the Commission, that support should be provided primarily by the Government itself. The Commission is growing amidst the growing scarcity of government funding. In fact, the initial set up cost that was given to the Commission was just Rs. 1,300,000. The budget for the first year was only Rs. 5,664,000. It shows the poor estimation of the cost of setting up and operating a new organisation. Apart from regular monitoring and investigations of conflict-related human rights violation, the Commission has always been short of money to perform its essential human rights functions, which include the selective scrutiny of legislation, advice on test cases and individual queries and on human rights issues; formal inquiries and investigations; research and policy coordination; press and media promotion, and support services. All these issues demand a good quality of work demanding a specialist’s expertise. There is also a need of budget for externally contracted work, and generous contingency provisions.

The approach of the Government was same in the second year also. The fund allocated was only Rs. 5,029,409, even lesser than that which was provided in the first year. In the third year there was some increment. The amount disbursed this time was Rs. 5,535,100. For the present fiscal year this has been increased to Rs. 7 million. However, according to its Strategic Plan, the Commission anticipates that the Government will provide it with 6,300,000 Nepalese Rupees (US$85,290) per year until 2008. On the other hand, the Commission estimates that over the period 2004-2008, its operations will cost between 38,680,000 Nepalese Rupees (US$523,657) or 64,830,000 Nepalese Rupees (US$877,680) per year. The figures above clearly point to a massive disparity between the Commission's running costs and the Government’s budgetary allocation.

Opinions would differ quite legitimately on priorities and strategies. But the Commission now has a Strategic Plan (2004-2008) with clear-cut priorities and interventions. Furthermore, the potential for growth in the days ahead is very considerable. The Government had never carried out any study about the detailed costing based on the structure of the Commission with the addition of some specific activities that do not naturally fall within the main operating sections. In the same vein, the explanations of the Commission staffs for additional fund or resources were also never positively considered. The fault really lies on the feeling that there are other competitive priority issues for the Government, and the issue of human rights protection and promotion is not a significant issue at the moment. The Commission hopes that the new Government will let its
political commitment to human rights followed through by a financial commitment.

If the Strategic Plan (2004-2008) is to be implemented in its entirety, there is no doubt that the Commission will have to rely on foreign donors to provide much of its financing, and the Strategic Plan has been formulated on the basis that this will continue to be the case. The Commission is already working with UNDP, the British, Norwegian, and Danish Governments and the European Commission to cater to its most urgent needs. While the Commission would be unable to function without the support of foreign donors, its reliance on this form of funding creates further complications. They do not help create a policy approach for the Commission that is comprehensive and coherent in the long term. Specifically, problems arise because donors often link funds to a specific program or purpose rather than donating the funds to the Commission and then allowing the Commission to determine where its resources are best allocated in accordance with the Strategic Plan. Moreover, even the programs over which the Commission has control – those funded by the Government – budgetary constraints have meant that the Commission has been forced to adopt a “short-term” and non-systematic approach to human rights policy. The Commission thus finds itself in an unenviable position: it needs donors’ funds to supplement the Government’s inadequate funding, but the donors’ funds limit the Commission’s independence and long-term planning and create a culture of “donor dependency.”

The funding issue is a very pervasive issue. There are always some controversies associated with it. But in any case, funding should be provided directly and unconditionally; if the Commission is to be truly independent, the Government should not order the manner in which this funding is to be used. If the Commission is to flourish and succeed, its present funding arrangements cannot continue. The Nepalese Government should increase the level of funding provided to the Commission and foreign donors should contribute aid to the Commission as unconditionally as possible. Moreover, the nations and organisations that have demonstrated their support for the Commission through their financial assistance should apply pressure on the Nepalese Government to provide the Commission with adequate funding as well.

The Commission has not spent time on searching for charity. This is the area which needs to be explored. By the time the Commission has already made some reputation for the good work it has done, if there is a strategy to get charity support from individuals around the country, or even abroad,
There is no reason why the Commission cannot create a comfortable financial base for itself.

National Human Rights Commission
Statement of Budget Demanded and Actually Received (In NRs.)

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Relationship with other National Commissions

The National Women’s Commission (NWC) came into existence in March 2002 - almost after two years of the establishment of the National Human Rights Commission to promote active participation of women in the development of the nation by safeguarding rights of women and their well being. There were no policy decisions as to why it was necessary to have the National Women’s Commission, when the National Human Rights Commission was already created. Giving a good share to the women members in the Commission, and equipping it with necessary mandate, the Government could have avoided creating another institution, and the unnecessary confusion surrounding it. The impression among the common people that women’s rights are different from the human rights, and that a national human rights institution like NHRC cannot address women’s human rights agenda is certainly not encouraging.

The National Dalit Commission (NDC) was also created together with the National Women’s Commission, again without any white paper. Both these Commissions are not statutory, and lack legal autonomy and professional independence that the National Human Rights Commission enjoys. Above all, they also don’t have the complaint handling power that the National Human Rights Commission has. The National Dalit Commission was formed with an objective of ensuring active participation...
of the Dalits (the so called sano-jat which form about 20 percent of Nepal's population) communities in the development of the country by uplifting and developing all the Dalits as well as for the protection and promotion of Dalits rights. But again it was not clear to many people why the National Human Rights Commission cannot address Dalit issues as a national institution.

Both these Commissions are created by way of executive decision of the Government, and they are not intended to be the national human rights institutions under the Paris Principles. Their remit is to work for the enhancement of their target group and advise the Government in the policy making by appropriate means without having independent statutory powers of recommendation, and the authority to decide about compensation. Their focus is not limited to human rights only. They are also involved in project activities. Nevertheless, both these Commissions can give their respective constituencies the satisfaction, and if worked properly they may evolve as independent statutory organizations. Indeed, this is what the activists associated with these organisations have been looking for.

The National Dalit Commission performs its duties among other things, make timely changes in legal and policy arrangements for Dalit rights, make recommendations to implement international documents to which Nepal is a party, monitor and coordinate NGOs on Dalits upliftment, launch programs on social awareness to end social discrimination and untouchability, receive petitions and act as per the existing law, and draft a bill to make legal arrangements concerning the National Dalit Commission. The Commission has also been entitled to protect and promote the rights of the Dalit community. But the question lies on the effectiveness of the Commission, as there already exists a "high-level" Committee operating under the Ministry of Local Development to address the Dalit problems.

According to the Ministry of Women, Children and Social Welfare, the National Women Commission is set to first formulate necessary laws for it and recommend it to the Ministry and suggest His Majesty’s Government for the effective implementation of the provisions of the international conventions on rights and well being of women, human rights and gender equity. The Commission also carries out studies for the exercise, promotion and protection of women’s rights and makes recommendations accordingly in pursuance to the international human rights norms and recognition. The term of office of the Commission’s office-bearers is of two years and their facilities and privileges are fixed by the Government, and not by a statute. As stated earlier, the Commission is not autonomous
and is under the Ministry of Women, Children, and Social Welfare but would slowly be made autonomous. The Commission will be performing advocacy and pleading jobs. Though the terms of reference have still some confusion, the Commission will address the issues related to rape, domestic violence, trafficking, battery, child marriage and polygamy among others. The Commission, besides being empowered to inspect and analyse the type of service rendered by a social organization and its internal facilities, also has the right to give directives to any social organization to provide immediate relief to the victims of rape, violence, trafficking, battering, child marriage and polygamy, among others.

The Government has tried to represent the entire national parties’ including two factions of the ruling party but the women activists outside the political parties are deprived of participation. All those outside the political parties would also be included once the Commission gets its autonomy and be complete. The National Women's Commission is moving ahead with a goal of attaining the status of a constitutional body.

The Commission has drafted a National Women's Commission Act for the preservation of rights of women and to increase their participation in the country's development mainstream and it has been engaged at present in discussions for refinement of the draft. The proposed draft mentions the rights and duties of the commission as coordination, advisory, ensuring enforcement of laws, investigation, representation in cases, and studying international conventions. It also states that the Commission should include representations from various sectors by women who have worked for ten years in women's welfare, and they should be recommended by a committee consisting of the Prime Minister, the Chief Justice, the leader of the main opposition party and female justices of the Supreme Court; the remunerations of the officials and members should also be equal to the Supreme Court judges.

The National Human Rights Commission has nevertheless a big role to play. If individuals, whether women or Dalits, believe that their rights have been infringed, or public bodies want advice on how to avoid doing so, there is the Commission to which they could turn. As Baroness Williams argued in the context of UK, where there is no national human rights institution:

"...we are looking at a picture of fragmented and in many ways disassociated organisations, each looking after some aspect of human rights, each one thrust into the picture by the pressures of the constituency that it serves ... what we are looking at is an extraordinarily uncoordinated structure of concern for human rights with wide gaps
between the organisations which currently exist. Those gaps may in part be filled by the Bill but they will not be satisfactorily filled if there is no provision for a human rights commissioner or commission. There is no overarching theme. There is no common culture of freedom to be found in this picture.”

The NHRC of course gives that picture, and it is in this light that the Commission needs to make coalitions with these executive-style Commissions. There are significant gaps in the protection provided by these Commission which play some role in relation to particular human rights (albeit that they are rarely defined, nor see themselves, as having a human rights mandate). In fact, on the question how should the work of a national human rights institution like NHRC relate to that of other bodies with special responsibility for particular rights, the Institute for Public Policy Research pointed out -

“The Human Rights Commission would complement the work of those bodies, in building a human rights culture from which they would benefit and in fulfilling particular functions, such as advising a disabled person on a human rights issue that fell outside the discrimination remit of the Disability Rights Commission. The equality commissions increasingly work together, for instance in providing joint guidance material, and the Human Rights Commission should equally work closely with them where appropriate. It should consult them where it’s broad responsibility, e.g. for promoting human rights awareness, touches on equality issues.

There is a long-term debate whether the equality commissions should one day be brought together within a single Equality Commission, as in Northern Ireland. The possibility that a Human Rights Commission could be part of such a structure, potentially along with other bodies such as the Information Commissioner has been raised by IPPR and others. We are firmly of the view that that possible long-term agenda should not interfere with the urgent need to establish a Human Rights Commission now, to fulfil the functions we have outlined. The Commission should then contribute to that long-term debate on the optimal relationship between the bodies when it is clearer what role the Government envisages they should play. There are major issues to be resolved, not least whether the equality commissions will be enforcing a duty on public authorities to promote equality on grounds of gender and disability, as the CRE now does on race; what kind of enforcement body will be needed for the new legislation on discrimination on grounds of age, sexual orientation and religion, not due on the statute book until 2003-6; and the long-term implications of devolution for the structure of the Equal Opportunity Commission, CRE and Disability Rights Commission. Those issues require extensive consultation and debate.

83 Committee Stage, Human Rights Bill, HL, 24 November 1997, col. 8423
These statements are self-explanatory. Until recently, the National Human Rights Commission has been trying to accommodate the staff and volunteers of these Commissions in its capacity development programmes, the challenge ahead is to augment the power and resources of each other to enforce the rights of women and Dalits.

**Commission in Relation with Judiciary**

Many of the judges who have interacted with the National Human Rights Commission think that the Commission has taken an activist role. They argue that this activist role does not encourage them to network with the Commission in any appropriate cases.

In one important issue, in 2003, in which the Commission wrote to the Supreme Court requesting a consultative meeting on how to use the existing laws and court procedures in the best interest of human rights protection, including the substantive issue of the use of the instrument of public interest litigation to deal with cases affecting mass, the Supreme Court denied to meet the Commissioners with no valid reasons. Many important human rights issues like that of cases of disappearances could have been tackled to some extent had the court really understood why the Commission needs activist stance at times amidst serious human rights issues. The Commission can make a real difference to the way a case is presented in court. It can also persuade judges to be more human rights friendly, pushing at the boundaries of accepted jurisprudence, or seeking to strike the balance between individual rights and collective rights in a slightly different place from where the judges have traditionally set it. The Capacity Development Project has clear-cut emphasis on sensitisation of judges on the concerns of the Commission.

While the NHRC has been able to carry out its interactive human rights training programs with the involvement of prosecutors (primarily Government attorneys) there is a need to reach out to the court officials and judges in the judiciary as well. Similarly, in the context of the ongoing conflict, the *habeas corpus* writ needs to be modernized to deal with the growing cases of disappearances in the country so that a decent instrument

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84 IPPR final evidence to JCHR on HRC 040701. Quoted from *A Human Rights Commission for the United Kingdom?* Evidence from The Institute for Public Policy Research to the Joint Committee on Human Rights, July 2001
can be developed to deal with the situation at hand. Moreover this is being expected by the human rights NGOs in the country.

So far the Commission has not taken any human rights complaint to the court; neither has it joined any proceedings as \textit{amicus curiae}. The reason largely is the attitude of some judges. Brice Dickson, Chief Commissioner of Northern Ireland Human Rights Commission, pointed out in 2002:

As well as funding individual applicants we can take cases to court in our own name. If we think there is an on-going human rights violation we can seek to go to court ourselves to prevent it, although there is an anomaly in the relevant legislation which actually precludes us, in such circumstances, from relying upon rights in the European Convention unless we ourselves, as a Commission, are a victim (which of course will rarely be the case). While lack of resources again precludes a great number of such cases being taken to court, the fact that we have the standing to take them in the first place distinguishes us from concerned non-governmental organisations. My own Commission, for instance, had the resources to try to stop the BBC from broadcasting an edition of Panorama two years ago. We unfortunately lost the case but I think we performed a valuable role in reminding such a powerful body that they too must not infringe people’s human rights, whatever crime they are suspected of.\textsuperscript{85}

This is not all. Many a time, a good approach comes out of experience and commitment to go ahead with the right cause:

The third type of involvement a human rights commission can have in court work is as an intervener. Strangely, this is a power which my own Commission had to go all the way to the House of Lords to secure for itself. While we were expressly given the power to assist individuals and to take cases in our own name, the legislation was silent on whether we could apply to a court to intervene. Assuming that we did have such a power we successfully applied to intervene in four High Court cases within a year of our creation – again, regrettably, without succeeding to any great extent in convincing the judges that our points had merit. Then, when we sought to intervene in the inquest into the 1998 Omagh bomb, which killed 29 people, the coroner ruled that we had no power to do so. We sought judicial review of that ruling but were unsuccessful first before the Lord Chief Justice of Northern Ireland and then before the Court of Appeal. It was only when we got to the House of Lords earlier

this year that we obtained what we always thought we deserved, namely a ruling that we had all the powers reasonably incidental to or consequential upon those which were expressly conferred upon us. Had we not been granted the power to intervene, it would have been richly ironic. This is because the Government itself was permitted to intervene in this very case (and did so at our request), and so were non-governmental bodies, all in support of our position. If a statutory body which had been set up to protect human rights had not been allowed the same interventionist power it would have seriously undermined our credibility.\(^{86}\)

There is yet another encouraging example. It has been more than two years and there is still no satisfactory resolution to the horrific riots of February-March 2002 in the Indian state of Gujarat. The riots followed an attack by Muslims on a train carrying Hindu activists, killing at least 58 people. In a retaliatory killing spree by Hindus, often led by activists of the Vishwa Hindu Parishad and the Bajrang Dal - allies of the ruling Bharatiya Janata Party at that time, and hundreds of Muslims were slaughtered, tens of thousands were displaced, and their properties were destroyed.

The Indian Supreme Court, however, has been able now to set a new benchmark for riot cases, which have a notoriously poor conviction rate in India and elsewhere. In a landmark ruling, the Indian Supreme Court recently overturned a state High Court verdict in the Best Bakery case, in which 21 Hindus had been acquitted for burning 14 Muslims to death after fearful witnesses recanted earlier allegations. In a clear indictment of the state Government of Gujarat, the Indian Supreme Court ordered that the Best Bakery case be re-tried in Maharashtra as Gujarat was still not “‘congenial and conducive’” to a fair trial. By transferring the case to a more neutral venue in neighbouring Maharashtra state, the Supreme Court rebuked both the Gujarat High Court and the local justice system, stating that the judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agenda. The Supreme Court directed the state Governments of Gujarat and Maharashtra to give adequate protection to witnesses and victims, ordered the appointment of a new public prosecutor, and ordered fresh police investigations into the case.

Since the public prosecutor had acted more as a defence counsel during the trial in Vadodara, the apex court took the extraordinary step of allowing the complainants to have a role in the selection of the public prosecutor who will conduct the retrial. “‘Though witnesses or victims do not have any choice in the normal course to have a say in the matter of appointment

\(^{86}\) Ibid.
of a public prosecutor,’’ it felt constrained to make an exception ‘‘in view of the unusual factors noticed in this case.’ ‘The apex court thus directed the state Government to consult victims and witnesses before appointing a new public prosecutor for the fresh trial in Maharashtra. The judges of the Supreme Court have also made scathing comments on the partisan role of the state, the police and the judicial machinery for their attempts to deny legitimate rights and justice to the victims of the riots.

In the Best Bakery trial, most of the key witnesses turned hostile and the 21 accused were acquitted on June 27, 2003. But one eyewitness, Zahira Sheikh, who watched many members of her family killed, revealed on July 7, 2003, that she and other witnesses were forced to change their testimony after receiving threats from a local legislator of the ruling party. Based on Zahira’s accusation, the Indian National Human Rights Commission (NHRC) had petitioned the Supreme Court to move key trials out of Gujarat. Quashing the High Court’s acquittal of all the 21 accused persons of the charge of killing 14 persons, the bench directed that the case be re-investigated under the direct supervision of the Gujarat police.

The Indian Supreme Court, writing a 70-page judgment for the bench, told the state Governments of Gujarat and Maharashtra to give adequate protection to witnesses and victims ‘‘so that they can depose freely without any apprehension of threat or coercion from any person.’’ Holding that fair trial was still not possible in Gujarat, the bench said: ‘‘Keeping in view the peculiar circumstances of the case and the ample evidence on record, glaringly demonstrating subversion of justice delivery system with no congenial and conducive still prevailing, we direct that retrial shall be done by a court under the jurisdiction of the Bombay High Court.’’

Questioning the seriousness with which the Gujarat Government has been pursuing the Best Bakery case, the Supreme Court said that the state had appealed against the trial court’s acquittal only after the Indian National Human Rights Commission moved the Supreme Court in August 2003. Even then the memorandum of appeal it originally filed before the High Court was ‘‘an apology.’’ It made improvements only after the Supreme Court expressed its unhappiness over the perfunctory manner in which the appeal was presented.

This decision of the Supreme Court of India was welcomed by the human rights community because, for justice to be done for victims of the Gujarat riots, what was necessary was impartial investigations and protection of witnesses so that they can testify without fear. In previous reports on the 2002 Gujarat riots Human Rights Watch had identified the failure to prosecute even known abusers and a lack of political will, both in Gujarat
state and at the national level, to identify those who planned the attacks. In many cases, charges have been dropped or dismissed by lower courts in a failure of due process.

The decision of the Supreme Court of India on the Best Bakery Case gives new dimension to criminal jurisprudence. Basically, on the one hand one bench of the Supreme Court monitored prosecution in riot cases while another bench decided on the judicial side the correctness of the high court order. This indeed is a notable shift in handling riots cases. It must also be an eye opener for all in the National Human Rights Commission in Nepal.

**Networking with Parliamentary Institutions**

A national institution constantly needs the support of a representative institution like the Parliament of sovereign people. Unfortunately at this stage the House of Representatives remains dissolved, and elections are not on schedule. This is the reason that the Commission has not been able to get this institution in its fold of the Capacity Development Project.

The Human Rights Committee in the House of Representatives is the principal human rights body of the House. However, this Committee cannot fulfil all the functions of the Commission, and neither can it be its substitute; but it can play a major role to boost up the activities of the Commission, and to give it the support of popular legitimacy. The Committee undoubtedly scrutinizes legislation and policy by elected representatives and calls upon the Government to be accountable in a more effective manner. It also takes critical view of Government policy (although they are less likely to do so if the Government is strongly committed to a particular policy and the issue is controversial). It can conduct a limited number of inquiries and ask the Government to commission research whenever necessary. Although the Committee cannot undertake a strategic enforcement role, it can back test cases or initiate proceedings against government or public bodies for failing to meet human rights standards, and it can cooperate with the Commission in most of these areas. The Commission can use the Committee members, who are the elected representatives of the people, to advance its statutory goals through the Parliament. The Committee can also make use of the power of the Commission to advise on individual complainants. It can also have the benefits of the power of the Commission to undertake promotional and educational activities and can speak with an independent expert voice to the press and media. The lead must be taken by the Commission itself.
The Commission has already realized that there is currently no discrete procedure in the Parliament which ensures that the human rights implications of draft legislation are scrutinized. The Human Rights Committee in the House of Representatives cannot be effective without such discrete procedures. Moreover, the Upper House of the Parliament is devoid of this type of device. Of course, there is a committee on delegated legislation with specific responsibility in this area, but it does not scrutinize delegated legislation to reconcile them with international human rights treaty commitments. This situation is compounded by the fact that most parliamentarians are lacking expertise in human rights law and do not have access to expert legal opinion, unlike those representing the Government.

In UK’s Westminster context, for example, a statement of compatibility without any supporting analysis explaining how that conclusion was reached, however, will not alter the disadvantage at which parliamentarians currently find themselves when seeking to challenge such ministerial assurances. This is because, in many cases, a provision is neither clearly in breach, nor in conformity, to the Convention. It is often a question of judgment and parliamentarians need to know how that judgment was arrived at. Parliamentarians will need an independent source of expert advice on the international human rights standards if they are to question ministers effectively. Ministers of successive governments have regularly ignored its advice and on occasions have not even consulted the body before introducing controversial measures with significant implications for human rights. The statutory remit of the Commission need to be broadened substantially to permit a real measure of coordination of the activities of other human rights agencies.

It is true that as a purely advisory body, the National Human Rights Commission is unable to take any decisive action on matters of major concern to it. However, this advisory and financially dependent status does not prevent the Commission from expressing its own independent views with whatever force it can muster and views that it wishes to place on record.

The present situation of parliamentary vacuum has made the Commission most vulnerable in its planning ahead.

Creation of Human Rights Promotion Centre

It is absolutely important for the Commission to include the Human Rights Promotion Centre (HRPC) in its capacity development activities. Although
the government of the day was so unhappy with the activities of the Commission in the latter half of 2003 that it announced its intention to establish the HRPC under the Office of Prime Minister of Nepal, this entity can now be helpful to the Commission in some ways if it develops that capacity.

After the declaration of this intention by Prime Minister Surya Bahadur Thapa on 4 November 2003, the Government on 14 November 2003 disclosed a blueprint of the Centre, which has been empowered to recommend measures to promote human rights and coordinate with other human rights organizations. A seven-member directive committee headed by the Chief Secretary is to advise the Centre. The uncertainty over precisely what role the Centre will fulfil in Nepalese civil society and the ambiguity over the proposed interaction between the Centre and the Commission led the Commission to immediately criticize the move of the Government.

Many other national and international human rights bodies also expressed serious concern against the establishment of the Centre. Some of them had a feeling that the National Human Rights Commission is being punished for pointing fingers at the Royal Nepal Army for brutally killing 19 unarmed rebels in Doramba, Ramechhap on 19 August 2003 while the Government was engaged in dialogue with the Maoist leadership. The Commission had also been critical of midnight arrests of over 600 people since the collapse of the ceasefire on 27 August 2003 by the masked security personnel and holding them incommunicado for indefinite periods. These human rights bodies also called for strengthening the Commission by giving financial resources and autonomy to establish its sub-offices in all the districts to monitor human rights violations both by the security forces and the Maoists instead of establishing a centre to whitewash the atrocities of the security forces.

The Government has insisted that the role of the Centre will be to complement and assist the Commission in the Commission’s efforts to promote and protect human rights rather than to act as a rival. Whatever the original intent, they have since changed their earlier stance and have started giving the picture that the intention is only to facilitate the Commission in all possible ways so that it can work effectively. In any case, the objectives and goals of the Centre looked identical to those set out in the Paris Principles and in the Human Rights Commission Act. What, then, distinguishes the Centre from the Commission and why is the Government was intent on creating second human rights promotion bodies are questions that remain unanswered.
The Directive on the Establishment, Work, Duties and Rights of the Human Rights Promotion Centre, 2003 which the Government issued later on lays down the sphere of interest of the Centre. So far it is seen that the Centre has not been able to focus on any specific area of its Directives, nor been able to help the Commission to meet its current challenges. As a bureaucratic outfit, it has been there with no strategy and activities, and it was created with such a big hue and cry that the Government has not even dared to scratch and disown it. The Centre has also appeared to be dramatically less independent than the Commission.

The HRPC is located at the Office of the Prime Minister and can help the Commission in several ways if there is a genuine desire and the Commission is able to develop the Capacity of those who work there. It is through work with the HRPC that what is often called a “human rights culture” can best be created in the civil servants of the country. It is civil servants who take most of the decisions that impact on individuals. They are the ones who most need to be sensitised to the requirements of a human rights approach to problem solving. The Commission should be able to utilise this new Centre in this light.

**Reform of Human Rights Commission Act, 1997**


During the last four years of operation, the Commission has realized that the Act might be further improved to correct the deficiencies in terms of Paris Principles which speak about standards like professional independence guaranteed by statute or constitution, autonomy from government, pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation, and sufficient resources. In addition, the Act also needs to be revisited so as to incorporate ideas gathered by the Commissioners and staffs of the Commission visiting several national institutions abroad during the last two years. The Act needs amendment to strengthen a few operational aspects of the Commission with a view to make it an effective national human rights institution.

A task force constituted by the Commission, with the help of the Capacity Development Project is reviewing the Act. It is also studying the Acts under which statutory national human rights commissions in India, Sri
Lanka, Thailand, the Philippines, Fiji, Australia and Canada are constituted. Such a study will examine the dictates of the Paris Principles and become familiar with the ways and means the above countries have adopted to operationalise these principles. The Chairperson, Commissioners and the staff of NHRC have already visited many national institutions and have some idea on reforms needed. They can advise on adequacy or shortcomings of the present Act and the prevailing international standards. A set of questionnaire for consultation with external stakeholders namely the Cabinet Secretariat, the Ministry of Law and Justice, Human Rights NGOs, professional bodies like Nepal Bar Association and Press Council, and related public international organizations may also be consulted to obtain their views on the changes necessary in the 1997 Act to make the Commission more effective in fulfilling its mandate. There is already a need to look at ways to integrate gender concerns in all aspects of the Commission including staff composition. A reform proposal can then be submitted to the meeting of the Commissioners for clearance.

While the present Act is good as a point of departure, it needs to build on the basis of international experience. The membership composition needs to be more inclusive by ensuring representation based on gender and ethnicity to achieve equality. The following options are being considered:

- Increase the membership from 5 to 7;
- Ensure representation of ethnic communities, Dalits and women are included in the present structure without increasing the number (in line with the Australian and New Zealand models);
- Create an advisory committee with clear and specific roles and responsibilities comprised of competent and committed people from a wide spectrum of civil society.

There is also a need to improvise the process of appointing members to NHRC to select the most suitable candidates for the job. Some of the measures suggested are:

- Invite interested and qualified candidates to apply for the posts together with their plan and vision for NHRC, assess the applications on the basis of the arguments presented by the candidates, and recommend the best candidates for appointment.
- Lower the minimum age requirement to provide opportunity to the people highly competent and committed to the cause of human rights.
The need to introduce a clause binding the state to fund the Commission adequately in accordance with the Paris Principles cannot be further emphasized. It is also felt that the provisions that give the Chief Secretary and the Attorney General power to do away with certain matters from the jurisdiction of the Commission should also be removed. It may be suggested that in appropriate cases they should request the Commission and the Commission itself would decide the course it should pursue. Similarly, the authority to take action on criminal cases on the Commission must be clearly elaborated. At present, the Commission has already developed a Code of Conduct for its members and staff, which needs to be mentioned in the enabling law itself. That necessitates defining key Code of Conduct for the Commissioners and vests the power to the Commission to suspend and take punitive actions on the Commissioners on violation of the code of conduct. Some compelling provisions, including punitive measures must be introduced to make the Government and its organs more responsive and accountable to the requests, recommendations, and decisions of the Commission. The clauses of present Act requiring the Commission to follow the Government’s accounting rules and other rules are in line with the Paris Principles must be ensured.

The reputation that the Commission has earned by the end of its fourth year in the critical mass is encouraging. But when the present set of Chairperson and members (Commissioners) retire next year in May 2005, the appointment committee will have to come with a new group. The imminent danger at this time has been discussed at the Commission more than once.

The present political uncertainty shows that the appointment committee may not be able to recommend the candidates that they consider promising to maintain the present legacy of the Commission. There has already been the development of an unethical tradition in which the King has required Constitutional Council, the body which recommends the King the names of the people to be appointed for the positions under major constitutional bodies including the Judges of the Supreme Court to take the clearance from him before moving any recommendations. This system of clearance is more than the consultation between the constitutional monarch and the state bodies. It is not yet certain whether the general elections for the House of Representatives will be held by April 2005 giving the way to a legitimate government created by it and taking the derailed constitutional course back to the track. The immobility of the political system and increasing use of Article 127 of the Constitution merely meant for
removing difficulties in procedural matters means the appointees more likely will be from those close to the establishment than others.

**Internal Issues and Team Building Efforts**

A primary focus for the Commission in its capacity development attempts has been to resolve internal matters involving decision-making within the Commission and improving team building. This latter process is of extreme importance in enabling the team to obtain their objectives. In addition, it has been recognized as an important factor in providing quality services and remaining competitive. This is especially important among the Commissioners, who are under stress because of the increasing challenges posed by the Maoist conflict.

Attempts have been made in the Commission from the beginning to clarify team goals with the Commissioners and senior staff, and to identify those issues which inhibit the team from reaching them. Methods to resolve these issues have also been discussed and other strategies sought that improve the ability of the team to achieve their objectives. In organizational team building, a good team at the top level is very important to influence the corporate culture at the mid or bottom levels. One of the key aims of team building work therefore is to change the behaviours and attitudes prevalent in the organisation. These are often independent of the people who actually work in the organisation, as even new recruits with different ideas normally adopt the existing organizational culture. The consultancy support given by the Capacity Development Project in this area has largely been successful. In addition, some staffs, especially those at the officer level, are provided with leadership training. They proudly share a sense of why the team exists and are invested in accomplishing their mission and goals.

However, challenges remain in regards to team building efforts at the senior level. The Commission relies on the support and guidance of the five Commissioners. It is therefore a major challenge to the Commission to remain effective when it has been reduced to three active Commissioners, due to suspension of duties and non-cooperation. This has the affect of delaying the decision making process, and creating a lack of strong leadership.

In July 2002, Professor Kapil Shrestha was dismissed following his alleged scandal with a *Dalit* temporary staff who worked under him. The matter largely seemed to be a private affair, with little concerns for the outsiders. This nevertheless had impact on the image of the Commission.
Shrestha has not been allowed to work at present until his case is decided by the court. This decreased the number of commissioners to four, reducing the Commission's strength by 20 percent.

This depletion at the Commission has been magnified by the non-cooperation from its only female Commissioner Indira Rana. Commissioner Rana, who was appointed together with rest of her colleagues, does not largely take part in the official business and her role is largely of a dissenter within the organization. Although constructive criticism is an integral part of allowing an organisation to grow, Commissioner Rana has often provided statements that are ill based and biased. They have served not to increase the ineffectiveness of the institution, but have rather been an additional hindrance to capacity building efforts.

Largely a critique of the Commission, especially of her senior and active colleagues Chairperson Nayan Bahadur Khatri and Sushil Pyakurel, Rana does not also have strong relations with the rank and file, at work or otherwise. Although she has been taking all salary and benefits from the Commission including the privileges associated with the position of a commissioner, Rana alleges corruption and mismanagement in the Commission:

I raised voices against the irregularities and opposed different issues inside the Commission. I also demanded that the wrongdoers should be punished. Then they started opposing me. What I meant was, if we take wrong steps this would set a wrong precedence. I am a legal professional, and I was in the civil service for thirty-five years. Therefore, I know what the administration should be like. But there are people who are involved in politics and they started making the commission like a small NGO. They are the ones who ruined the Commission. There is no system at all, and when I talked for a system I became a sore in their eyes. ... The Commission has failed to function because there is no transparency in its conduct, there is no accountability, no commitment, no conduct according to the rule, no good governance, no team work, and there is misuse of property.  

The Commission has time and again tried to resolve such issues within the Commission itself. In fact, when a very active and vibrant institution has to face such charges, they not only undermine and damage the credibility of the institution but negatively affect in its functioning as well, especially

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when such accusations are coming from a Commissioner, who is supposed to act honourably, conscientiously, independently and without bias or conflict of interest. The Commission has detailed records of her participation and involvement in the Commission’s activities:

Table I: Total Number of Meetings Attended

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<tr>
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<th>Total Number of Meetings Attended</th>
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<tbody>
<tr>
<td>Rt. Hon'ble</td>
<td>Nayan Bahadur</td>
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<tr>
<td>Chairman</td>
<td>Khatri</td>
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<td>Rt. Hon'ble Dr.</td>
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<td>Lal Das</td>
<td>Sushil</td>
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<td>Hon'ble</td>
<td>Indira</td>
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<td>Pyakurel</td>
<td>Rana</td>
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<td>Hon'ble</td>
<td>Kapil</td>
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<td>Shrestha*</td>
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<td>74</td>
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<td>72*</td>
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* Hon. Kapil Shrestha has not participated in meetings after NHRC’s decision of 22 July 2002.

Table II: Total Number of Absences in Meetings While Being Present in the Office

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<tr>
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<th>Absent</th>
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<td>Pyakurel</td>
<td>Rana</td>
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<td>2</td>
</tr>
<tr>
<td>Indira Rana</td>
<td></td>
<td>Shrestha</td>
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<tr>
<td>Hon'ble</td>
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<tr>
<td>Kapil Shrestha*</td>
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</tbody>
</table>

* Hon. Kapil Shrestha has not participated in meetings after NHRC’s decision of 22 July 2002.
Table I shows that Commissioner Rana only attended 50.6% of the crucial weekly meetings and Table II shows that of the 72 meetings that she remained absent from, 75% of the time she was present in the office, thereby highlighting her shirking away from the responsibilities in the important job of decision making at the Commission. This situation has presented a huge challenge for the Commission. The immediate impact has been observed in the poor utilization of staff meetings. The Commission also suffers from the lack of a permanently appointed expert on gender issues. Although a decision has been made on the appointment, the expert is yet to take the post. Similarly, with only three active Commissioners, the Commission’s decision-making body is weakened as well. As such, it has become most crucial for the Commission to not only implement on the Code of Conduct for the Commissioners and staff to ensure prevention of such acts of Commissioners that are detrimental to the institution, it is also important that appropriate internal grievance mechanisms are established to deal with such issues as and when they arise for the smooth functioning of the Commission to its fullest capacity.
Chapter – VI

Conclusion & Recommendations

The National Human Rights Commission of Nepal was established under the Human Rights Commission Act, 1997. This statute seeks to ensure an effective human rights commission by addressing the independence and mandate requirements set out in the Paris Principles. The Commission is in the fifth year of its operations. This study has tried to capture how the Commission is developing its capacity, how this capacity is helping the process of institutionalisation; and what level of efficiency has the Commission achieved at this stage.

As stated in Chapter II, that the job of protecting and promoting human rights as an independent national institution within the governmental structure is the primary function of a human rights commission, is deductible from the pronouncements of the United Nations on the topic. In 1991 the UN Commission on Human Rights organised a workshop in Paris on “National Institutions for the Promotion and Protection of Human Rights”. Those attending this workshop framed what became known as “The Paris Principles relating to the Status of National Human Rights Institutions”. These were endorsed by a resolution of the UN Commission itself in 1992 (no.54) and then by a resolution of the UN General Assembly in 1993 (48/134).

Conclusion

This book has attempted to assess the status of the National Human Rights Commission of Nepal in regards to the four Paris Principles. This includes analysing the competence and responsibilities of the Commission; its composition, independence and pluralism; the methods of operation, and the additional principles concerning the status of the Commission which has a quasi-jurisdictional competence, (an authority to hear and consider complaints or petitions concerning individual situations). The national institution of Nepal does have a broad mandate enthusiastically embraced in Article 9 and other provisions of the Act. The existing legislation governing the body does not limit the definition of what constitutes human rights, and provides for whole categories of rights or important institutional actors to fall within the bounds of the Commission.

Starting with the notion of capacity development and its importance in the institutionalisation of a new organisation, attempts were made to see how
the minimum common denominators for a national institution have been set in Nepal to protect and promote human rights in the country. As has been analysed, the Act provides for operational and legal independence including the ability to undertake investigations on the Commission’s own initiative. This also details a process for appointing and dismissing Commissioners in an attempt to guarantee pluralism and independence, among other things. Then there is a review of activities of the Commission in the area of human rights through education and outreach, complaints and investigation mechanism and effective implementation of human rights through human rights monitoring and advisory functions. This is followed by a critical assessment of major issues, the capacity of the Commission to deal with them, and the process of institutionalisation being pursued. Chapter V is elaborate, and tries to pinpoint the nature of problem and possible solutions. This Chapter is potentially a reappraisal of how the Commission has been working over the last four years.

The process for developing the Strategic Plan 2004-2008 of the Commission, also reproduced here in the appendix, was a notable exercise in the Commission towards its institutionalisation. It was preceded by a SWOT (strength, weaknesses, opportunities & threats) analysis among the staff and Commissioners. The Strategic Plan has identified the core values, strategic objectives, programmes and priority interventions and the vulnerable issues and groups the Commission needs to target in its work. It has also determined how far it will adopt a strategic approach to human rights issues. This seems to be one of the greatest achievements of the Commission. By way of the Strategic Plan, the Commission has accepted challenges in terms of popular expectations that are reflected in it. This in itself is a major achievement for a young organisation.

This research has tried to show, how the Commission as an institution is founded and how it has found a niche for itself. The law has given it the mandate that it deserves. It has found a vision and mission for itself out of this. At the heart of the performance of the Commission lie the issues concerning the efficiency, competence, motivation, and morale. Attempts are being made to expand the Commission by way of regional offices. It is pursuing effective mobilization, development and utilization of human resources as critical factors for an institution, as well as for the success of the transformation process. It is becoming skilled in handling the complex processes of change taking place around it, and will require continuous refreshing and updating in such skills. It has already developed some linkages with its major stakeholders. They all are evidence of the fact that the Commission is being institutionalised, and the capacity development support to it has contributed to this process effectively. In fact, they all show that institution building is the creation of capacities to work and
endure challenges. It entails the dismantling and reformation of old organizations and institutions – legal, administrative, economic as well as social – the improvement of efficiency and effectiveness of existing institutions, the enhancement of the Commission’s professionalism.

Generally the results of capacity building and institutionlisation works have been encouraging with notable occasions of laudable successes. Having said that, it will be necessary to quickly add that perceptions of effectiveness obviously depend, to some extent, on the observer’s interest and point of view. However, the effectiveness of a national human rights institution should also be measured in terms of its transformative effect on the broader society, and in particular how far it is able to influence the behaviour of state or its officials. This depends in part upon the institution being seen to issue sanctions against those found to have committed abuses. A broader question concerning the effectiveness of a national institution is whether it has any impact in situations where violations of human rights are extremely grave. The answer in all these counts is satisfactory 'yes.'

From the victim's point of view, it is almost sure that successful investigation and resolution of complaints of human rights violations is the cornerstone of an effective and legitimate national institution. However valuable their other works may be - education, training, scrutiny of laws, study of international instruments - the public judges the Commission in terms of its willingness to tackle the violations of human rights. It may do so by resolving individual complaints or by publicly exposing and challenging wrongdoing by the Government or other powerful institutions. The attempts made by the Commission in this area are laudable. However, there is no doubt that the inability of the Commission to enforce its recommendations in most of the cases is a serious problem. Although reasons why the Commission cannot be given the power to make binding recommendations are compelling, nevertheless, more thought needs to be given to linking it to specific or general judicial bodies to enforce its findings. Moreover, this is not just the problem in Nepal, with similar if not graver difficulties have been found with national institutions working in similar situations.

Moreover, the Commission has received inadequate funding from the Nepalese Government. So far, it has been able to secure support from international donor agencies in the form of individual project funding and through the United Nations Capacity Development Project. However, the NHRC is by no means financially independent as it is not able to adequately cover the costs of its essential human rights functions from the
budget supplied by the Government. This is a serious concern. Its credibility is also threatened by a perception that it is unable to deal with the human rights abuses perpetrated by the Maoist insurgents. The public expectations of the Commission is simply too high. When a country descends into violent conflict it is because institutions have failed and, possibly, because injustice and inequality have became unbearable. Human rights bodies might bear a responsibility for that descent, but they cannot single-handedly retrieve the situation. They operate most effectively in a context where the rule of law is generally accepted. When that consensus is absent they may still play a watchdog role but they cannot expect to bring the violators to heel. This is true about the Commission as well.

This book has made a series of recommendations for strengthening the position of the Commission and the position of human rights in Nepal. Viewed as a whole, the Government’s stance on human rights and on the Commission is not very supportive. There has been some change in recent months and its strong moves are expected to boost a concerted campaign to strengthen the Commission. This is the only way to make the security force, the district and regional administration, and rest of the state functionaries accountable to the rule of law. The Government may argue that this is an unfair characterization of its policy stance, particularly in light of the internal conflict that has troubled Nepal since 1996. With the Declaration of Commitment for the Implementation of Human Rights Principles and International Humanitarian Law, it has slightly improved its public posture, but there is no improvement in the overall human rights situation. Attacks on the State are no excuse for failing to protect the people of the State from attacks on their fundamental rights and freedoms. The Government faces a challenge. It is the challenge of proving to the world and to the Nepalese people that human rights need not be sacrificed in the name of ‘national security.’

Notwithstanding these issues, the Commission has achieved a great deal in the four years since opening its doors to the public. It has shown leadership in using its powers to protect and promote human rights, particularly when investigating violations throughout the country. The Commission has created a highly visible presence, raising awareness of human rights issues in various forums. The Commission has also been able to establish itself as a peak Nepalese human rights advisory body. This is also demonstrated by the fact that it was requested, by both the State and the Maoists, to play a unique advisory role during the most recent ceasefire between the parties in conflict.
However, from an organisational and administrative perspective, the
Commission still has a long way to go in proving itself a resilient and
respected institutional player. For example, currently the Commission’s
legislative and promotion divisions are trying to cover too many human
rights issues. Instead, the Commission should facilitate the work of local
human rights NGOs and activists by collaborating more closely with these
entities. Complaints handling is still in the early stages of development and
suffers from lack of procedure and transparency. Attempts are however,
being made to get rid of the present vacuum. Information, especially from
registered complaints, is not efficiently captured and analysed to direct the
Commission’s future work. On several occasions, even though it is legally
required to do so, the Nepalese Government has not consulted with the
NHRC before submitting reports under international human rights treaties.
Although the situation is improving when compared with the situation in
the past, a resolution to this problem needs to be more actively pursued.

Many of the Commission’s weaknesses pointed out in this book may
simply be teething problems of a young organization finding its way.
Whether they will one day be seen as symptomatic of an institution unable
to adequately perform the tasks expected of it depends on a number of
factors. Obviously there are domestic, social and political aspects that lie
outside the Commission’s control. Of great importance, however, is the
ability of the Commissioners and Commission staff to work effectively as
a team and in close collaboration with the human rights community, both
locally and internationally. It is hoped that the following recommendations
may provide a starting point for Commission members and staff to take up
this challenge going forward.

Recommendations

Based on the analysis above, Nepal’s National Human Rights Commission
could further strengthen its work by:

- Pushing for reform of the Human Rights Commission Act, 1997 to
  ensure more explicit guarantees of adequate Government funding,
  so the Commission can meet its basic operational needs, and
  perform essential human rights functions. The Commission should
  be empowered to formulate its own budget and make allocations
  under appropriate heads, including raising of the salary levels of
  its staff as needed, so that trained staffs do not leave the
  Commission.
• Developing strategies and milestones for phasing out the existing projects being supported by the UNDP and other donors. As each of the milestones is achieved, they should be publicised within the Commission in order to promote staff confidence in their ability to undertake the tasks expected of them.

• Attempting to create local structures even within the regional offices to enable it to have full national coverage for the reception of complaints. The Government should ensure that budget is adequate to cover the establishment and the effective functioning of such structures.

• Advocating for the removal of jurisdictional limitations contained within the Human Rights Commission Act, 1997, particularly with regard to the military. The NHRC should be authorised to investigate all allegations of violations by agents of the State. These jurisdictional limitations may seriously undermine the Commission’s effectiveness as a credible human rights defender.

• Working further strongly with human rights NGO’s and activists to facilitate their human rights education programs and legislative review activities and encouraging these bodies to work together to achieve their aims. The Commission should continue to cultivate and deepen its working relationship with a variety of organs of civil society, especially non-governmental organisations working either in the human rights field or with specific vulnerable groups, such as organizations of women, children, prisoners or ethnic communities. Such bodies should continue to be involved in the activities of the Commission.

• Ensuring staffs are adequately trained and resources are appropriate for branch offices. One approach to addressing the issue of lack of experienced staff is for the Commission to work more closely with volunteers from relevant academic disciplines such as law to research specific human rights issues. According to Human Rights Watch, the South African Human Rights Commission was able to complete a research study into human rights abuses against undocumented refugees, immigrants and asylum seekers by training and closely supervising law students to
undertake research interviews. Following such an innovative approach would be useful for the Commission not only because it creates a pool of minimally experienced human rights workers but also because it generates interest in human rights issues within the broader community.

• Increasing independence, public legitimacy and accessibility by ensuring that there is further diversity in the membership of the Commission including adequate representation of vulnerable groups. Multi-member institutions offer a greater opportunity for pluralism in a Commission like this.

• Activating its work on mediation or conciliation as an appropriate tool in minor matters coming under the jurisdiction of the Commission. But serious human rights violations should be investigated with a view to the initiation of a full legal process to ensure that officials found responsible are fully accountable for their actions. At the minimum this would involve referring a case to the appropriate authorities for further investigation and possible prosecution.

• Focusing further on investigation and resolution of individual complaints is an important part of the work of the Commission. However, individual complaint should not be resolved in ways that undermine the principle of accountability of public officials. The Commission should use complaints as an indicator of broader systemic human rights issues, which should be the principle focus of its work.

• Publicising the result of the Commission’s investigations, both on complaints and on systemic human rights problems. It increases both the transparency and public accountability of the institution and the transformative social effect of its work.

• Implementing more sophisticated ways of capturing and analysing data from complaints so that the Commission’s work can be informed by research. For example, demographic data could be compiled from registered complaints and analysed to try and identify human rights ‘hotspots’ throughout the country.

88 Human Rights Watch. Protectors or Pretenders?: Government Human Rights Commissions in Africa.
• Effectively implementing the complaints handling mechanism installed at the Commission to develop fair and effective case flow management. This can be done by: (1) Adhering to a complaints handling timeline. It is acknowledged that the treatment and disposition of a matter often depends on third parties (particularly the party complained against), but the aspects of the process coming under the Commission’s control should be dealt with in a prescribed manner; (ii) Sticking to clear criteria for case selection. At present the Commission has an ad hoc approach to handling complaints – generally they are dealt with according to dates received. It may be appropriate for the NHRC to streamline its work by establishing and publicising criteria for prioritising complaints; (iii) Making the complaints handling process more transparent. Complainants should be kept informed throughout the process as to the progress of their case. One way of approaching this might be to develop a web based complaints tracking system, as the Indian Human Rights Commission has done. However, issues of client confidentiality would have to be taken into consideration; (iv) Accurately recording and publicizing the number of Commission recommendations that have been implemented. For example, the number of laws amended and compensation paid on the basis of Commission decisions could be regularly published in a simple chart on the Commission’s website, and (v) Finalising the complaints handling manual of the Commission as soon as possible.

• The Commission should put in force the regulations and manuals developed for human rights investigation and monitoring as soon as possible.

• Establishing a more accountable and transparent appointments process regarding Commissioners. This requires more effective consultations with Nepalese human rights activists and local civil society before selection of Commissioners is made. In practice, however, appointments have not been made in a transparent and consultative manner. This diminishes public confidence in the process used to select Commissioners and the overall credibility of the NHRC.

• Implementing a formal grievance procedure for Commissioners and staff of the NHRC. If the organization is viewed as an efficient and fair place to work this may also assist in the long-term retention of staff members, regardless of low wages.
• Non-compliance with Commission decisions is an issue in Nepal, particularly with regard to the military institutions within the current security system. The Commission might be able to exert pressure, through the media, by publishing lists ranking public bodies in terms of their compliance or non-compliance with Commission decisions.

• Developing methods for evaluating its performance. Evaluation should have specific reference to its performance in relation to vulnerable groups and its success in putting gender and ethnic issues in the mainstream.

• The Commission should not be seen as an isolated solution to the problem of human rights violations. It only works effectively as part of an overall framework of democratic institutions. Consideration should be given to the interrelationship of the institutions in their functioning.

The biggest challenge faced by the National Human Rights Commission since its establishment has been to carry out its activities of protection and promotion of human rights in an environment of armed conflict. Specifically, the Commission faces an uphill task in addressing the increasing number of cases of human rights violations as a result of this conflict.

When the Capacity Development Project was developed in 2000, priorities of the Project were more focused on establishing the Commission in key areas of its operation and the institutional development of the Commission. Through the years, it has been increasingly felt that capacity and expertise development in establishing human rights approaches to conflict management has become most necessary for the Commission. Priority has therefore been given to the development of the Commission focusing on its role in the conflict as well as the response to the trend of increasing human rights violations. The existing Capacity Development Project is being revised to address this situation. Going beyond that, the revised Project also addresses the capacity development needs to implement the policies outlined by the Strategic Plan 2004-2008 of the Commission. The Plan details the priorities of the Commission in carrying out all its activities related to peace building and the promotion, monitoring and advocacy of the fundamental rights of the people. The Project should therefore be able to provide its support to the Commission in meeting the challenges in implementing the objectives of the Strategic Plan in the years ahead.
The Commission had been previously dealing with a number of donor countries and agencies in the respective projects. This has now changed to a two-basket approach whereby the Commission is supported by the basket fund coordinated by the UNDP, and the second basket fund related to the regional outreach project supported by the European Commission. The latter project was also developed through the technical assistance of the capacity development project. It is therefore necessary to integrate all smaller projects into these two major donor groupings while supporting all the activities to be carried out under the Strategic Plan.

The experience of the past four years has shown that much needs to be done towards the protection and promotion of minority rights and the rights of indigenous and underprivileged groups and communities. As such, the development of human rights expertise among people from such groups and communities is another challenge. In spite of attempts by the Commission in this regard, the fact that people from such groups and communities are yet to reach the human rights mainstream is a harsh reality facing the Commission. As such, a plan has been envisaged, inducting into the Commission a minimum of 30 graduates from minority, indigenous and underprivileged communities. They will help the Commission to give a national look that it deserves. Such individuals in two groups of 15 will be provided a stipend and also provided on-the-job training followed by placements in the Commission’s outreach program in the next three years. The revised project aims to assist in this endeavour of having a clear objective towards developing human rights culture among all such disadvantaged and underprivileged people in the country.

Another component lacking in the capacity development of the Commission is in the area of legal research, as it has become most necessary to promote legal research some basic areas such as the revision of the Terrorist and Destructive Activities Act (TADA), along with laws related to political freedom, economic, social and cultural rights as well as minority rights in conformity with international human rights laws and treaty obligations of Nepal. The need to develop capacity in the field of legal research has also been pointed out in the Strategic Plan of the Commission. Such revisions coupled with advocacy in the national level will have a cascading effect in the existing norms and standards in the legal system of Nepal, particularly in the areas of legal protection, provision of effective remedies, and empowerment. Legal protection will concentrate on institutional human rights norms and standards. The provision of effective remedies will focus on adjudication mechanisms, enforcement issues, (police, prison and others) and civil society oversight.
Finally, the issue of legal empowerment and demand for remedies will concentrate on legal awareness, legal aid and other empowerment related capacities. This research will help improve the legal regime in matters of access to justice (or the ability of people to seek and obtain a remedy respectful of basic human rights). However, this involves rigorous lobbying of the Government and the political parties.

These conclusions and recommendations have been a maiden endeavour from someone in the Commission to evaluate the overall activities of the Commission in the process of its institutionalisation. It is hoped that they may be utilized not only by those interested in the process of institutionalisation of national human rights institutions, but also to the officials and staff of the Commission to not only look into both the achievements and shortcomings of the past but also the challenges that lie ahead in the years to come.
APPENDIX 1

Resolution on National Institutions for the Promotion and Protection of Human Rights

A/RES/48/134
85th plenary meeting
20 December 1993

The General Assembly,


Emphasizing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the promotion and protection of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,
Welcoming the growing interest shown worldwide in the creation and strengthening of national institutions, expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean, held at San Jose from 18 to 22 January 1993, the Regional Meeting for Asia, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Bearing in mind the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights,

Noting the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasizing the universality, indivisibility and interdependence of all human rights, and emphasizing and recognizing the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General, prepared in accordance with General Assembly resolution 46/124 of 17 December 1991;

2. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;

3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans;
4. Encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

5. Requests the Centre for Human Rights of the Secretariat to continue its efforts to enhance cooperation between the United Nations and national institutions, particularly in the field of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;

6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training and to do so on the basis of established procedures for the use of available resources within the United Nations Voluntary Fund or Advisory Services and Technical Assistance in the Field of Human Rights;

7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical cooperation in the field of human rights, as well as national centres for human rights documentation and training;

8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;

9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and for other public information activities, prepared or organized under the auspices of the United Nations;

10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting at Tunis in December 1993 with a view, in particular, to examining ways and means of promoting technical assistance for the cooperation and strengthening of national institutions and to continuing to examine all issues relating to the question of national institutions;
11. Welcomes also the Principles relating to the status of national institutions, annexed to the present resolution;

12. Encourages the establishment and strengthening of national institutions having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level;

13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.
APPENDIX 2

Principles Relating to the Status of National Institutions

Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

   (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

   (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

   (ii) Any situation of violation of human rights which it decides to take up;
(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
Composition and guarantees of independence and pluralism

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.
Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.
Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.
APPENDIX 3

National Human Rights Commission Act, 1997

Preamble:

Whereas, it is expedient to establish an independent and autonomous National Human Rights Commission for the effective enforcement as well as protection and promotion of Human Rights conferred by the Constitution and other prevailing laws;

Be it enacted by Parliament in the twenty-fifth year of the reign of His Majesty the King Birendra Bir Bikram Shah Dev.

Chapter – 1

1. Short Title and Commencement:
   (1) This Act may be called "The Human Rights Commission Act, 2053 (1997)".
   (2) This Act shall come into force at once.

2. Definitions: In this Act, unless the subject or context otherwise requires:

   a) "Commission" means the National Human Rights Commission constituted under Section 3.
   c) "Chairperson" means the Chairperson of the Commission and this term also includes the Member of the Commission who acts as an Acting Chairperson pursuant to Section 20.
   d) "Member" means the Member of the Commission and this term also includes the Chairperson.
   e) "Secretary" means the Secretary of the Commission.
   f) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights as are embodied in the international treaties relating to human rights to which Nepal is a party.
   g) "Prescribed" or "As prescribed" means prescribed or as prescribed in the Rules framed under this Act.
Chapter - 2

Provisions relating to the constitution of the Commission and terms of service of Members

3. Establishment and constitution of the Commission:

(1) The National Human Rights Commission comprising the following Chairperson and Members shall be established and constituted:

(a) One person from amongst the retired Chief Justices or Judges of the Supreme Court – Chairperson
(b) Three persons from amongst persons who have rendered an outstanding contribution in the field of law, human rights, social work or communications and journalism, ensuring representation from all the fields to the extent possible – Members
(c) One person from amongst the retired persons who have served in any office of constitutional bodies or who have served in the capacity of special class officer of His Majesty's Government – Member

(2) In addition to the qualification referred to in sub-section (1) a person eligible for appointment as the Chairperson or Member must possess the following qualifications:

(a) Be a citizen of Nepal

(b) Have attained forty years of age

(c) Not convicted by a court of any criminal offence involving moral turpitude.

(3) The person once appointed as Member of the Commission shall not be eligible for appointment to any other government service.

(4) The Chairperson or Member of the Commission shall not be entitled to carry on professional business as long as he/she holds office in the Commission.

(5) The Commission shall be a body with perpetual succession.
(6) The Commission shall have a separate seal of its own.

(7) The Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.

(8) The Commission may, like an individual, sue and be sued in its own name.

4. Appointment of Chairperson and Member:

(1) His Majesty the King shall, upon the recommendation of the Recommendation Committee constituted pursuant to sub-section (2), appoint the Chairperson and Members of the Commission.

(3) For the purpose of recommending the appointment of the members of the Commission there shall be a Recommendation Committee consisting of the following office holders:

(a) The Prime Minister: Chairperson

(b) The Chief Justice: Member

(c) The Leader of the Opposition in the House of Representatives: Member

(4) The Committee constituted pursuant to sub-section (2) may regulate its own working procedures.

(5) It shall be the responsibility of the Chief Secretary of His Majesty's Government to make necessary arrangements for holding the meetings of the committee mentioned in sub-section (2).

5. Terms of Office of Members: The term of office of the Members shall be five years from the date of appointment. They shall be eligible for reappointment.

6. Vacancy of Office: The office of a Member shall be vacant in the following circumstances: -

(a) In case of death,

(b) In case of resignation accepted by His Majesty the King,
(c) In case of Completion of the term of office under section 5,

(d) If the Human Rights Committee of the House of Representatives, by a two-thirds majority of the meeting attended by at least two-third members of its total members, adopts a resolution that any Member of the Commission is not fit to hold office by reasons of incompetence or misbehavior, and the resolution so adopted is approved by the House of Representatives.

(e) Provided that a Member so charged shall be given a reasonable opportunity to defend himself /herself in the Human Rights Committee of the House of Representatives.

7. **Conditions of Service of Members**: The remuneration, facilities and other conditions of service of the Chairperson and Members of the Commission shall be as prescribed, provided that such remuneration and facilities shall not be less than the remuneration and facilities to which the Judges of the Supreme Court are entitled.

8. **Meetings of the Commission**:

(1) The meetings of the Commission shall be held on such date and in such place as the Chairperson decides.

(2) The Commission shall normally meet twice a month.

(3) If three Members are present in a meeting of the Commission, it shall be deemed to constitute the quorum for the meeting.

(4) The meetings of the Commission shall be chaired by the Chairperson and in the absence of the Chairperson the meeting shall be chaired by the senior most Member.

(5) The decisions of the Commission shall be made by the majority of the Members. In the event of a tie, the Chairperson shall exercise the casting vote.

(6) No act or proceeding of the Commission shall be deemed invalid merely on the ground of vacancy of the post of a Member.

(7) The Commission may itself regulate other procedures relating to its meetings.
Chapter – 3

Provisions Relating to the Functions and Procedures of the Commission

9. Functions and Duties of the Commission:

(1) It shall be the primary responsibility of the Commission to protect and promote the human rights.
(2) In order to perform the responsibility mentioned in sub-section (1), the Commission may carry out the following functions:

(a) Conduct inquiries and investigations on the following matters, upon a petition or complaint presented to the Commission by the victim himself/herself or any person on his/her behalf or upon information received from any source, or on its own initiative:

(1) Violation of human rights and abetment thereof,
(2) Carelessness or negligence in the prevention of violations of the human rights by any person, organization or authority concerned.
(3) Inquiries in or investigations on the matters mentioned in clause (a) conducted by the Commission itself or caused to be conducted through any person or an authority or employee of HMG in accordance with the directions of the Commission and submit the report to the Commission,
(4) Order a petition or a complaint to be filed by giving reasons therefor if the Commission finds such a petition, complaint or information has no basis or is of such a nature that it cannot be enforced by the courts of Nepal,
(5) Inquire into a matter with the permission of the court in respect of any claim on violations of human rights which is sub-judice in the court,
(6) Visit, inspect and observe any authority, jail or any organization under His Majesty’s Government and to submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights,
(7) Review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions,

(8) Study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty's Government for effective implementation of the related provisions,

(9) Undertake or cause to be undertaken research in the field of human rights,

(10) Publicize and propagate human rights education among the various sections of society through various seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights,

(12) To encourage the functioning and efforts of institutions working in the non-governmental sector,

(13) Evaluate the existing human rights situation of the country,

(14) Make necessary recommendations to His Majesty's Government regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights and

(15) Carry out such activities, as it may deem necessary and appropriate for the enforcement, promotion and protection of human rights.

(3) On the matter of Nepal's obligation to furnish reports under international treaties on human rights, His Majesty's Government shall furnish reports upon receiving the opinion of the Commission thereon.

10. Matters Not Subject to the Jurisdiction of the Commission:

The Commission shall have no power to inquire into or institute any other proceeding on any of the following matters pursuant to this Act:

(a) Any matter within the jurisdiction of the Military Act,
(b) Provided that nothing will bar the Commission from carrying out the functions mentioned in this Act on a matter in respect of which the court may exercise its jurisdiction pursuant to the Constitution and the prevailing law.

(c) Any matter certified by the Chief Secretary of His Majesty's Government that it may have adverse effect on the treaty concluded between His Majesty's Government and any foreign Government or international or inter-Governmental organization, or on the security of the Kingdom of Nepal.

(d) Any matter certified by the Attorney General that it may have adverse effect on the conduct of an inquiry and investigation being carried out in accordance with the law for the purpose of identifying the crime or the criminal.

11. Powers of the Commission relating to Inquiries: -

(1) The Commission shall, while inquiring into the petition or complaints or reports within its jurisdiction, have the same powers as a court may have under the prevailing laws of Nepal in respect of the following matters: -

(a) Requiring any person to appear before the Commission for recording his/her statement and information within his knowledge,

(b) Summoning witnesses and examining them,

(c) Ordering the production of any document,

(d) Requesting any document or copy thereof from any Governmental or public office or the court,

(e) Examining evidence,

(f) Carrying one or causing to be done an on-the-spot inspection, ordering the production of any physical evidence.

(2) The Commission may prescribe such limitation of time, as it may think fit for attendance of any person, production of any document or evidence pursuant to sub-section (1).
(3) In case, the Commission has the reasonable grounds to believe that any thing or document relating to the subject matter of its inquiry or investigation is in possession of any person or is in any place, it may, in pursuant to the existing law of Nepal, search or cause to be searched such person or place and seize or cause to be seized any such material or take or cause to be taken extracts or copies or duplicates of such document.

(4) The Commission may, if it thinks necessary, conduct a public hearing during its inquiry about any incident.

(5) The Commission may send along with special stricture to His Majesty's Government or authorized body or authority to take action against a person who does not send the documents or necessary evidences required by the Commission in connection with an inquiry or who does not cooperate in carrying out the Commission's functions or a person who does not appear before the Commission on being summoned.

(6) The Commission may, as required constitute committees or sub-committees to carry out its functions required to be performed by it under this Act, and the functions, duties and powers of such committees or sub-committees and allowances and facilities to be received by the members of such committees or sub-committees shall be as prescribed by the Commission.

(7) The Commission may, as required, avail itself of the services of experts or specialized agencies on a concerned subject. The service, condition and facilities of the experts rendering such a service shall be as prescribed by the Commission.


13. Process for Implementation of Decisions of the Commission:

(1) If, during proceedings by the Commission on the complaints and petitions filed within its jurisdiction pursuant to Section 11, the accused is found guilty, it shall write to the organization or authority concerned to take necessary action against the guilty person.
(2) While writing pursuant to sub-section (1), if the Commission thinks it necessary to provide the victims with necessary compensation it shall also mention the nature of compensation in its recommendation.

(3) The basis and procedures to be followed for allowing compensation pursuant to sub-section (2) shall be as prescribed.

(4) Upon receiving written recommendation for action pursuant to sub-sections (1) and (2), the concerned body or authority shall take action as required by the Commission, or if such action cannot be taken, having set out the reasons therefor, the concerned body or authority shall send its report of the action taken within three months from the date of receipt of the intimation from the Commission.

14. To Submit Reports:

(1) Each year the Commission shall prepare its annual report on its activities and submit it to His Majesty the King and His Majesty the King shall cause such report to be laid before the Parliament.

(2) Each year the Commission shall publish details of the activities carried out by it for the purpose of public information, provided that if the Commission deems it necessary, it may publish these details at any time.

15. Financial Management:

(1) The Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its functions.

(2) The Commission may receive financial assistance with a view to enable itself to carry out the functions mentioned in Section 9.

(3) The amount of financial assistance received pursuant to sub-section (2) shall be expended in accordance with the terms agreed upon between the donor agency and the Commission.

(4) The Commission shall maintain accounts of its income and expenditure and other relevant records in accordance with the prevailing law.
(5) The accounts of the Commission shall be audited by the Auditor General.

(6) Other matters concerning the financial management of the Commission shall be as prescribed.

Chapter - 4

Miscellaneous

16. Office of the Commission:

The Central Office of the Commission shall be located in the Kathmandu Valley. The Commission may when necessary set up branch offices in different areas in the Kingdom of Nepal.

17. Secretary:

(1) There shall be appointed a Secretary in the Commission.

(2) The Secretary shall be appointed by His Majesty on the recommendation of the Commission. The terms of office, service, conditions and other facilities of the Secretary shall be equivalent to that of the Secretary of His Majesty's Government.

18. Employees of the Commission:

(1) The Commission may appoint employees as may be required to carry out its functions, and the service, terms and facilities of the employees so appointed shall be as prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Commission may request His Majesty's Government to provide employees required by it. It shall be the duty of His Majesty's Government to so provide.

(3) In case the Commission requests any Government office for assistance in the performance of its functions, the office so requested must provide the required assistance.

19. Delegation of Powers:

The Commission may delegate any of the powers conferred on it under this Act to the Chairperson or any Member or employee of the Commission or to an officer of His Majesty's Government or to the committee or sub-committee that may be constituted under this Act or to any person.
20. Acting Chairperson:
In the event of vacancy of the Chairperson, His Majesty may authorize the senior Member of the Commission to act as Acting Chairperson until a new Chairperson is appointed.

21. Oath:
Before assuming office, the Chairperson shall take an oath before His Majesty the King, similarly the Members will take the Oath before the Chairperson in the manner as specified in the Schedule of this Act.

22. Communication with His Majesty's Government:
All communications of the Commission to His Majesty's Government shall be channelled through the Secretariat of the Council of Ministries.

23. Framing of Rules:
The Commission may, in order to carry out the objectives of this Act, frame necessary rules. While doing so the Commission may consult His Majesty's Government.

(a) Provided that in making rules relating to remuneration and facilities, His Majesty's Government shall be required to be consulted.

24. Saving:
No suit or legal proceeding shall be instituted against the Commission or the Chairperson or a Member or an employee or any person designated by the Commission in respect of any act done or intended to be done in good faith pursuant to this Act or rules framed under this Act.

Schedule
(Relating to Section 21)
Oath

I, ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... swear in the name of god/solemnly affirm that I will bear loyalty to the Constitution of the Kingdom of Nepal, 1990 and faithfully discharge the responsibility and duty of the office of Chairperson/Member assumed by me, without fear, favour, partiality, ill-will or greed and that I will not communicate or divulge any matter which becomes known to me in the course of discharge of my duties in any circumstance whether I shall be holding office or not, except in pursuance of the prevailing law.
Date of Royal Seal: - 2053-9-24-4 (8 January, 1997)
APPENDIX 4

THE STRATEGIC PLAN 2004-2008
NATIONAL HUMAN RIGHTS COMMISSION, NEPAL

OUTLINE

The Strategy Plan 2004-2008 (B.S. 2060-2065) is based on the lessons learnt during the evolutionary first 3 years of the organisation and feedbacks received from various sectors, including the Members and the staff of the National Human Rights Commission, as well as several national and international stakeholders.

The mission statement of the NHRC is defined as follows:
“*Our mission is to develop a culture of human rights in the country by taking a leading role as an independent and impartial national institution for the protection and promotion of human rights in accordance with universally recognized human rights principles.*”

The critical issues that the NHRC is geared to address are human rights violations due to the State and the Maoists conflict; protection of fundamental rights of the people; violence against women with focus on trafficking, witchcraft, domestic violence, sexual harassment; child rights with focus on education, exploitative labour and violence; people’s right to food, health, shelter and work; ratification, domestication and implementation of international instruments; human rights awareness and education; and, last but not least, the issue of impunity. To support its work in these important areas, the NHRC has identified urgent need to enhance the organisational management and efficiency. Accordingly, the following strategic objectives have been set.

1. To contribute to peace building process by ensuring that the parties to the conflict are fully in compliance with the international standards for human rights and humanitarian law.

2. To promote, monitor and enforce the guarantee of fundamental rights of the people with focus on the right to life, liberty, justice and equality.

3. To advocate the right to food, health, shelter, education and work as the fundamental rights of the people with special attention to improving the human rights situation in the most underdeveloped regions of Nepal.
4. To help improve the legislative and regulatory mechanisms for control and cessation of: a) domestic and dowry related violence against women and b) trafficking of women.

5. To help improve legislative, monitoring and enforcing arrangements for the elimination of violence against children in the form of trafficking, abuse, exploitation and the use of children in conflict.

6. To improve the extent to which international treaties and conventions are ratified, domesticated and implemented in Nepal.

7. To promote, develop and provide education, information and advice about human rights.

8. To transform the image of the organisation by increasing its efficiency and acceptance across all sections of Nepalese society.

To achieve the strategic objectives, the Commission will make the best use of the power vested to it under the Human Rights Commission Act, 2053 and reorganise the Commission to enhance its work efficiency and effectiveness. In addition, it will build a network of partners and supporters for implementation of the Strategic Plan, expand its accessibility and mobilise the necessary financial resources.

ORGANISATION PROFILE AND HISTORY

The National Human Rights Commission (NHRC) was established on 26 May 2000 (13 Jetha 2057) in accordance with the Human Rights Commission Act, 1997. Since its inception, the NHRC has been facing a range of challenges typical to a new organization. A major challenge has been the deteriorating human rights situation in the country because of the conflict between the State and the Maoists. A limited number of staff and inadequate budget for its effective operation have been two major

<table>
<thead>
<tr>
<th>Selected Key Statutory Functions of NHRC</th>
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<tbody>
<tr>
<td>Protection and promotion of human rights as its primary responsibility by carrying out:</td>
</tr>
<tr>
<td>- Inquiries and investigations on HR violations;</td>
</tr>
<tr>
<td>- Visit, inspect and observe any authority, jail or any organization under His Majesty’s Government and to submit necessary recommendations to His Majesty’s Government on necessary reform;</td>
</tr>
<tr>
<td>- Review the constitutional and legislative provisions for enforcement of human rights and make recommendations for effective implementation of such provisions;</td>
</tr>
<tr>
<td>- Recommend to His Majesty’s Government for effective implementation of the related provisions of international treaties and instruments;</td>
</tr>
<tr>
<td>- Evaluate the existing human rights situation of the country;</td>
</tr>
<tr>
<td>- Recommend to His Majesty’s Government on reports to be submitted by Nepal to treaty monitoring committees and give opinion on the reports prepared for submission to the committee.</td>
</tr>
</tbody>
</table>
obstacles. Notwithstanding these constraints, the NHRC has undertaken a number of initiatives to protect and promote human rights of the people of Nepal, which is its statutorily defined mandate. These activities are helping the NHRC to progressively achieve what it has been set to do by making its existence felt to the stakeholders. It has established itself as an independent and credible human rights institution.

There are milestones as well. In the year 2000 (2057), the NHRC introduced the Complaint Handling and Compensation Determination Regulation and joined the Asia Pacific Forum of National Human Rights Institutions. In the summer of 2001 (Jestha 2058 BS), to take an example, the NHRC recommended His Majesty’s Government to compensate the families of each prisoner killed in Nepalgunj Prison making the perpetrators responsible for the death of the prisoners. The NHRC recommended His Majesty’s Government to make individuals accountable for the act of human rights violations by requiring them to share the cost of compensation. Since His Majesty’s Government paid the entire compensation, the NHRC drew attention of the His Majesty’s Government to the possibility that the act of not making perpetrators accountable encourages violation of human rights and that it is an improper use of the public treasury. Another example is the arrangement of public hearings in Butwal and Lahan on the issue of a missing person and civil disobedience by Chamars in protest of the discrimination against them.

Lately, the Commission is seriously looking into the incidents of violence against women on alleged charges of practicing witchcraft. As an immediate intervention, it has recommended to His Majesty’s Government to create strong legal mechanisms to take serious action against the perpetrators involved in witchcraft cases and provide as compensation an amount of Rs. 50,000.00 to the family of a woman who was killed and Rs.30,000 to the victims who were beaten and subjected to inhuman treatment. The Government was made liable for its failure to put in place a strong and adequate legal mechanism to protect the people.

The Commission has also been regularly monitoring human rights situation in the conflict areas. In the years 2002 - 2003, it monitored human rights situation in 41 districts which were most affected by the violent conflict between the State and the Maoists and published a report based on its findings. Following the ceasefire announcement on 13 March 2003 by both parties, it proposed a draft code of conduct to both the parties to uphold the ceasefire. Lately, it is actively advocating for the signing of a Human Rights Accord by the State and the Maoists and holding
dialogues with the political parties and the civil society to contribute to the peace process from a human rights perspective

Considering the seriousness of the problem of trafficking of women and children, the Commission established the Office of the National Rapporteur on Trafficking in Women and Children in December 2002. The office has become the focal point for trafficking issues and is facilitating the work of the Commission in several ways.

The Commission also published a research report, in cooperation with the Centre for Victims of Torture (CVICT) on the study of insurgency-related torture and disability in the regions affected by the State-Maoist conflict and also implemented a small project to raise awareness on Dalit rights. A report on the situation of human rights in Nepal covering the key areas of civil, political, economic and social rights is, at present, in the press.

The Commission has been developing professional relationships with human rights NGOs and the state apparatus, including various human rights cells in the army, the police and the Home Ministry. Likewise, it has established effective partnerships with a few members of the international community who are interested in promoting human rights in Nepal along with the members of the Asia Pacific Forum of National Human Rights Institutions. The NHRC is going to convene and chair the 8th Annual Meeting of the Forum as well.

As one of the reasons for the violation of human rights is lack of knowledge and awareness about human rights, the Commission has conducted various promotional activities targeting police, Government officials and other actors. A radio programme on the issue of Dalit rights was launched for 8 weeks with nationwide coverage. A documentation centre has also been established with the assistance of the Danish Institute of Human Rights and is in the process of evolving. A fortnightly e-Bulletin has been a regular and significant feature of the Commission’s work. The e-Bulletin has proven to be an effective medium of informing national and international stakeholders about the work of the Commission. It has inspired some national and international agencies to launch their own e-Bulletins as well.

Late last year, the Commission recruited 20 permanent staff to increase its staff size to 27. Now it is contemplating adding some more staff to effectively implement the strategic plan. In early 2003, it went through a restructuring process for the effective execution of its duties and created five divisions with specific functional areas and terms of reference for the
The existing office setup, which will include a special complaint-handling desk that is also accessible to persons with physical disabilities, is being improved to make its operations functional. The desk will be backed by a computerised complaint handling system, which is being developed in collaboration with the Canadian Human Rights Commission and the Indian National Human Rights Commission. A comprehensive complaint handling procedure is also being developed.

As one of its statutory functions, the Commission has reviewed the periodic report of the His Majesty’s Government on the Convention on the Rights of the Child to the UN treaty monitoring body. Currently, it is preparing a list of Acts and procedures to address the issue of discrimination, torture, fair trial, child rights, violence against women, etc., and to bring them into line with the internal treaties and conventions.

The Commission carried out inspection visits to several prisons to assess the legality of detention and the physical conditions of the prisons. It has recommended improvements to the Government in the security, health, sanitation and legal treatment of the prisoners as well as improvements in the physical facilities of the prisons.

One of the most significant works of the Commission has been its contribution towards the peace process by proposing a draft ceasefire agreement and code of conduct to be followed by the parties to the conflict. Later, it proposed a draft human rights accord to the both parties and lobbied for their acceptance.

NHRC played an important role in facilitating fulfilment of reporting requirement on UN Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment. As a result, focal points in various ministries have been set up and two training programmes have been organised in treaty reporting procedures for HMG staff. NGO personnel were also included in the training to help them prepare better shadow reports on the implementation of treaty.

His Majesty’s Government has been facing difficulties in submitting reports to treaty bodies both in time and in quality. To facilitate such submissions, the Commission organized a “Seminar on International Human Rights Reporting Obligations of His Majesty’s Government” involving secretaries of different Ministries. As a result, focal points in relevant ministries have been identified and the Cabinet Secretariat has assumed overall coordinating responsibility. A five-day training workshop on UN reporting under the Convention Against Torture and a weeklong
follow-up workshop have been organised for Government and non-Government staff.

The Commission fielded a high-level probe-committee to investigate the violation of humanitarian laws by the Army in Doramba, Ramechhap District, where 18 people were killed. Similar probe-committees were sent to Nagi, Panchthar and Dhangadi, Siraha to investigate incidents involving murder of security personnel and civilian by the Maoists. Formation of such committees and the nature of their work to investigate serious human rights violation is the first of its kind in the short history of NHRC. As a result of the investigations, the Royal Nepal Army has appointed a court of inquiry to reinvestigate the Doramba case.

The stakeholders’ general perception about the Commission’s performance so far has been satisfactory. Of the total respondents, 57 percent and 31 percent found the performance as satisfactory and good respectively. Only 1 percent reported poor and 3 percent of the respondents felt that no achievement has been made.

Since the formulation of the first strategic plan in the year 2000, which is ending this year, the human rights situation in the country has become worse. The Commission has taken some major strides despite numerous external and internal challenges posed by the conflict and resource constraints, etc., but more work is required with a clear focus on making full use of opportunities that are available to it. As such, this new strategic plan has been developed for the next five years.

STRATEGIC PLAN PREPARATION PROCESS

The “Strategic Plan 2004-2008” is an outcome of the invaluable experience of the Commission during its first three years and the analysis of the feedback, especially on key human rights issues received from all the stakeholders. The priorities have been set, based on human and financial resources that are available and likely to be available to address them in the plan period.

As the first step for its preparation, a seven-member Strategic Planning Committee was formed with one of the Members as the Coordinator of the Committee. A retreat of Members and staff was organized to review the existing mission and vision statement of the Commission and prepare the revised version. At the retreat, the staff and Members identified the core values that would guide the work of the Commission in pursuant to its purpose, along with immediate, mid-term and long-term human rights
issues faced by Nepal. Analysis of strengths, weaknesses, opportunities and threats (SWOT) was also carried out, and in addition, a separate half-day SWOT analysis was conducted with the Commissioners.

A workshop with the staff was organized to identify key external stakeholders. Following that, a stakeholder survey questionnaire, both in electronic and print form, was prepared in English and in Nepali and distributed to various stakeholders, e.g., various offices of His Majesty’s Government, commissions, Nepalese HRNGOs, independent experts, the judiciary, media, political parties, professional organisations, UN agencies, diplomatic missions, donors and international human rights organisations. Former employees of the Commission were also invited to participate in the process. A half-day special session with the media was organised to assess their perception about the work of the Commission and priority human rights issues were discussed. All total, 153 responses were received from various stakeholders, including significant number of responses from the His Majesty’s Government. Participation of the international community in the process was also encouraging.

As budgetary constraints - a major hurdle for effective functioning - have not permitted the Commission to follow a systematic approach to address human rights issues, most of the interventions in the past have been short-term. Therefore, except for a project to monitor the human rights situation that was approved for six months and then extended for two short durations, and one research grant project, there has not been any systematic project intervention and evaluation of effectiveness of the interventions. Lessons learnt by the organisation (see below) while implementing regular activities and the “Responding to the Crisis Project”, as well as the recommendations from external consultants on the design of the Project form the basis for the new strategic plan. Also, the staff and Members participated in an organisational self-assessment exercise to examine where the organisation stands with regard to leadership, administrative and managerial efficiencies.

The draft versions of the Strategic Plan were extensively discussed with the Members and the staff to arrive at this stage. The draft document was circulated to a select group of organizations soliciting their feedback. In addition, the document was posted on the website of the Commission for feedback from other stakeholders.
Key Lessons Learnt

- Strategic planning and annual program plan based on the strategic plan should be the basis for the Commission’s effective operation, as fragmented interventions have not produced the desired impact.
- Complaint handling should be made more result-oriented by establishing clear policy and procedures as well as recruiting sufficient staff to manage the caseload.
- Internal teamwork of the Commission and sound management and administration of organization to draw and retain professional staff are a must to maximize its impact.
- A streamlined and professional relationship both on the part of the Commission and the donors is necessary to avoid ad-hoc intervention and delays in project funding.
- Lack of adequate core funding from the His Majesty’s Government is going to create donor dependency and lack of sustainability. Thus, the state’s fulfilment of its financial obligations from core fund is necessary for effective functioning of the Commission in long-term.
- The dependence on short-term funding almost inevitably leads to a short-term vision; hence the fundamental importance of establishing adequate Government core funding.
- The Human Rights Commission Act should be improved to make the work of NHRC more effective.
- People should be made aware of role and functions of NHRC and human rights values.
- Better participation of stakeholders in the operation of NHRC is needed.

MISSION AND VISION STATEMENT

Mission Statement:

“Our mission is to develop a culture of human rights in the country by taking a leading role as an independent and impartial national institution for the protection and promotion of human rights in accordance with universally recognized human rights principles.”

Vision Statement:

“We envision a Nepalese society where all the people enjoy their rights equally with freedom and social justice, and where impunity is not allowed to prevail.”
CORE VALUES

A. Equality

As a national human rights institution, the Commission will always strive for equality in all aspects of its work, both inside and outside the organization and is committed to the principle of equal opportunity for all. It will also uphold the principles of equal protection.

Issues related to women, Dalits, ethnicity, physical disability and geographic representation will be given serious consideration in staff recruitment to ensure equality of opportunity, and special provisions will be made to attract those groups. The Commission will adopt specific policies to ensure that all people receive an opportunity to be employed in the Commission as well as to participate in the work of the Commission in accordance with the equality rights guaranteed in the Constitution. Members and the staff will be trained in equality, gender and ethnic issues. Audits will be conducted to examine gender, Dalits, ethnicity, disability and geographic balance and sensitivity in the rules, procedures, forms and formats of the Commission to improve equality in its work. One of the Members of the Commission will monitor the implementation of the principle of equality and submit annual report to the Chairman highlighting the progress and areas needing further action.

B. Impartiality

The Commission has identified six key factors, namely gender, caste, race, religious beliefs, class and political opinions, which could lead to partisan behaviour in its work. In this regard, the Commission will give due respect and attention to all visitors on equal basis irrespective of their gender, age, social, economic, political or hierarchical status. The same will be fully accorded to the staff and Members of the organization. The Commission will treat everyone equally, unless at times when it would be necessary for it to set priority on the basis of the need and urgency.

The Commission is committed to fair and impartial hearing of complaints or issues submitted for action. The decisions of the Commission will always be based on objective assessment of the evidence and always in accordance with prevailing legislation and internationally accepted rules and principles of human rights.
Personnel administration and management will always be in accordance with fair and established rules and procedures. Matters concerning staff recruitment, training and development will be firmly based on fair policies and the principle of equality in treatment.

While being impartial, the NHRC will remain sensitive to the issue of justice to the victims.

C. Accessibility

The Commission will keep access to its office open to any individual and organization and welcome them on official business. In order to increase access to the people, the Commission will continue to mobilize its efforts to open regional offices and/or establish other alternative arrangements to provide effective nationwide access to the services of the Commission. Likewise, the Commission will periodically visit various parts of the country, especially the remote areas, prisons and detention centres, and will remain open to any invitation to meet and discuss human rights issues in any part of the country. The Commission will improvise its office set up to enhance its accessibility to people with disabilities, including the provision of language interpreters and sign language interpreters. In addition, the Commission will ensure that the visitors will have free access to the Commission, though they will have to disclose their identity in confidence to the staff of the Commission for internal purposes.

Language being another barrier, the Commission will prepare its annual reports and other major publications available in two major languages of Nepal — based on current national census — starting in 2004 with one more language in addition to Nepali. Key human rights promotional materials will be published in different languages to reach the diverse ethnic and linguistic groups that exist in Nepal. It will accept complaints in all national languages, starting with three major languages in the year 2004, besides Nepali, and will gradually strive for inclusion of other key languages based on need. Its field offices will receive complaints in the major languages spoken in the region. For effectively dealing with different languages, it will design staff policy to attract people from different ethnic/language groups, and gradually make the necessary changes in the documents and forms.

A dedicated hotline and a mobile phone for reporting serious kinds of human right violations during off hours, weekends or holidays requiring immediate action of the Commission will be established. In addition, the Commission will make arrangements to open the Complaints Office
during the weekends and public holidays and the office responsible will have the authority to act promptly on serious cases.

A small committee comprising one of the Members and a few staff from different ethnic backgrounds will monitor the progress on enhancing accessibility to the Commission. It will submit a half-yearly report to the Commission with specific recommendations in the areas needing improvements, if any.

D. Accountability

The Commission takes full responsibility for proper management and expenditure of funds received from His Majesty’s Government as well as from other sources. To ensure that maximum resources are invested for program activities, the Commission will always keep the program support or administrative costs at the lowest level possible.

To ensure that the financial management is of the highest standard, the Commission will appoint an independent, competent and reputed audit firm to conduct internal audit of the expenditure of NHRC on a periodic basis. The auditors will submit their final report directly to the Commission. The Commission will carefully review the report and take necessary action to remedy the issues, if any. The Commission’s audited financial statement, which is an inseparable part of its annual report, will be posted on its web site, and made available to any interested party.

The Commission is equally accountable to the public about the effectiveness of activities for promotion and protection of human rights in Nepal. In this respect, all programmes and projects having a duration of one year or more will be evaluated by an independent evaluator to assess the impact on the human rights situation in Nepal. The findings and recommendations of such evaluations will be incorporated in the annual report of the Commission, which will be made available in print form and in electronic form through the Commission’s website. Likewise, internal monitoring will be strengthened to improve planning and implementation. In addition, annual performance plans, which will include the targets for resolution of complaints, law reform, etc. will be prepared on the basis of the strategic plan of the Commission and the progress will be reported to the public and the His Majesty’s Government through the annual report.

The Commission will always follow the existing rules and develop additional sets of rules and procedures that are essential for accountable
operation, and ensure that they are strictly followed to respect the principle of the ‘rule of law’ in every aspect of its dealings.

A Code of Practice on the way in which the Commissioners and the staff communicate with members of the public will be developed and implemented. The Chairman will ensure that all the Members follow the code; the Secretary will be responsible for ensuring that the staff members of the Commission, and those working under projects that are managed/co-managed by the Commission, fully comply with the Code. Adherence to the Code by the Members and the staff will be discussed in every quarterly meeting among the staff and the Members, and necessary action will be taken, when necessary.

A Code of Conduct will be developed and implemented for outsiders, who join human rights monitoring and investigation teams formed by the Commission.

E. Transparency

Information on, or related to complaints will be kept confidential. The Commission is committed, however, to providing free and smooth access to information about its decisions, policy, work and finance as much as possible. The information will be presented in the annual report and posted regularly on the Commission’s website. The Commission’s decisions on the matters of public interest will also be posted on the website. Hard copies of the decisions will be made available to the public upon receipt of formal request and upon ascertaining the relevance of such requests. Both parties to the dispute will be given a copy of the decision. In addition, the Commission will respond satisfactorily to any formal query regarding its work, and in this regard, a register for queries will be maintained and one of the Members will monitor the timeliness and quality of the responses. As for the matters of complaints and investigations, the Commission will release the information unless it is unethical and if it does not compromise, jeopardise the case, and affect the safety and well being of individuals, especially those who are involved in the cases.

Regular electronic bulletins and quarterly newsletters in Nepali and English languages will be published to keep the public and other stakeholders informed of our work.

All vacancies in the Commission will be filled in a transparent manner. In this regard, a recruitment policy governing long-term staff and short-term
The Commission believes that active participation of public and staff in its affairs enhances the level of transparency, therefore it encourages the civil society and other key stakeholders to actively participate in the work of the Commission. In this regard, the Commission will promote and ensure participation of key stakeholders while formulating human rights policies, introducing legislative changes, implementing its activities. Likewise, the in-house decisions on non-routine matters will be made by involving the Members as well as the staff in the decision-making process. Participation of stakeholders will be one of the criteria to determine the quality of the work of the Commission.

A Complaint & Suggestion Box will be set up in the Commission and the Chairman will take necessary action promptly on those complaints. A register will be maintained to log all the complaints, the nature of complaints, and the actions of the Commission.

F. Independence & Autonomy

The independence and autonomy of the Commission depends on adequate human and financial resources as well as its legal status. In this regard, the Members and the staff of the Commission will work with His Majesty’s Government and other key stakeholders to ensure full implementation of the minimum standards as required under the UN General Assembly Resolution 48/134 concerning national institutions for the protection and promotion of human rights.

Special Arrangements to Ensure Implementation of the Values

A five-member-committee comprising of one of the members and four staff members representing different ethnic background will review the progress on implementation of the above values every six months. They will report to the Commission with specific recommendations in the areas needing improvements, if any.

An external audit of the values will be conducted annually to examine the level of implementation of the values by the Commission and to suggest ways and means of institutionalising the values.
In addition, the Commission will not be influenced by any undue pressure or influence from any individual or organisation while executing its duty of promoting and protecting human rights, and will take all the necessary measures to protect the independence and autonomy of the Commission. If and when necessary, the Commission will inform the public about such undue pressure or influence.

Whilst every individual is free to have political views, the Commission’s work as an impartial institution will always be free from the influence of partisan political ideologies and preferences.

A committee of staff and Members will periodically meet to review the independence and autonomy of the Commission, document their findings, which will be included in the annual report of the Commission, and ensure that corrective measures, where necessary, are taken.

The Commission will strive to build its own office premises within a period of ten years. In this respect, the Commission will work towards securing adequate land from the His Majesty’s Government.

CRITICAL ISSUES

A. People are facing a grave threat to past developments and further progress in the field of human rights due to the conflict between the State and the Maoists.

Nepal is slipping into a deep crisis because of the protracted violent conflict between the State and the Maoists. There have been two ceasefires within the last two years, but both broke down ensuing a new wave of violence. Over seven thousand people have lost their lives and thousands have been displaced. The violence has seriously infringed the right to life and liberty. Violation of Common Article 3 of Geneva Conventions by both sides is common. Education of children has been seriously affected due to the closure of schools in the areas affected by the conflict. Food and medicine supplies are critically affected. The Maoists have used children in the conflict. At the time of the declaration of the second ceasefire, over 17,000 people, including children, have been displaced and the actual number of people still under detention, both legal and illegal, is not known. The number has increased since the break up of the second ceasefire. Extortion and kidnapping by the Maoists have continued even during the second ceasefire period. The House of Representative remains dissolved and the possibility of elections taking place is remote. Mainstream political parties are at loggerheads over the
legitimacy of the Government. As a result, the country is plagued by a grim human rights situation. Yet, there is no sign of lasting peace, which remains the desire of the 2.3 million people of Nepal.

It is critically important that both the State and the Maoists declare ceasefire, sign a peace agreement and fully respect the human rights norms. Equally important is the need to deliver justice to the victims of the conflict and address human rights related root causes of the conflict.

B. A number of fundamental rights of Nepalese people are not adequately protected.

The advent of multi-party system of governance in 1990 has brought some significant improvements in the situation of fundamental rights – a notable achievement is the guarantee of certain fundamental rights by the Constitution of 1990. However, a lot more effort and work are needed to raise the standards of respect for fundamental rights to a satisfactory level. At its present status, the fundamental rights guaranteed by the Constitution remain either curtailed or violated. For example, the right to equality and liberty, guaranteed under the Article 11 of the Constitution, remains to be implemented effectively, for discriminations are pervasive in the society.

Right to life, liberty and fair trial:

Since the beginning of the conflict in 1996, both the state and the non-state parties have violated the right to life and liberty of people. Occurrences of killings, disappearances, use of human shields, arbitrary arrests, detention, abductions, torture and inhuman treatment have been alarming, notwithstanding the huge loss of life on both sides.

The right to life is also being violated or put at high risk due to negligence of service providers, such as transportation companies and health service providers. In the absence of necessary legal protections, the lives of the people are unnecessarily lost during travel and while seeking medical treatments.

Freedom of opinion and expression has been curtailed by the state under the Terrorist and Destructive Activities (Control and Punishment) Act and the media has faced various kinds of threats. The Maoists are actively engaged in incidents of abductions, torture and other inhuman and degrading treatment, including “disappearances”, the use of people as human shields and killings are rampant. Such actions of the state and the Maoists have seriously jeopardized people’s human rights, especially their
right to life and liberty. In addition, the people’s right to associate peacefully has been seriously infringed, especially in regions that are seriously affected by the conflict.

Fair trial is a fundamental right guaranteed under the Constitution, but a number of legislative and procedural factors such as provisions contained in the Public Security Act, the Public Offence and Punishment Act, Terrorist and Destructive Activities (Control and Punishment) Act, and the Police Act adversely affect the right to fair trial. Other impeding factors include inadequate transparency in the judiciary, and the complexity and length of time taken by legal process.

**Caste based discrimination (untouchability)**

Caste-based discrimination is widespread. Such a practice violates the fundamental rights guaranteed by the constitution and international treaties to which Nepal is a party. Weak legislation, poor enforcement and apathy of the state authorities to the issues have been some of the major factors contributing to the violation of these fundamental rights. In addition to creating social disharmony, caste-based discrimination has given impetus to the violent conflict as evident from participation of large number of discriminated and marginalized people in the violent conflict.

**Gender based discrimination**

Women still face discrimination in many fronts. Differential wages in the private and informal sector for the same kind of work, especially in agriculture, construction work, industry and the informal sector is prevalent. The inheritance right to ancestral/family property, citizenship right of women, the practice of identifying only on the basis of paternal lineage, etc. are some of the key gender based discriminations prevalent in Nepal.

**Penal reform**

Nepalese penal system lays great emphasis on punishment with minimum concern for reform and rehabilitation. The system violates a number of rights of the prisoners. The requirement of separating convicted prisoners from those awaiting trials is not practiced systematically. The overwhelming majority of prisoners in Nepal are detained in dilapidated buildings with leaking roofs, very poor ventilation, foul smelling toilets and crowding. However no special provisions are made for the accommodation and special needs of the elderly, mentally disabled, or
pregnant prisoners or for those with dependent children. The Prison Act regulates the prisoners’ right to meet and communicate with their immediate family, friends and relatives. It prohibits communication in the inmate’s mother tongue, if different from Nepali, during family visitation. Prison authorities scrutinize or read all correspondence to and from the prisoners. Furthermore, the prison staff may use any weapon against the prisoners with impunity.

There are no separate prisons for women in Nepal. Women sentenced to imprisonment have to be kept in separate cells from women awaiting trial, but in practice, it is not always the case. Besides suffering from physical and psychological trauma, female prisoners often become victims of sexual abuse and exploitation by prison wardens and male prisoners.

Most of the laws that address prisoners’ rights are outdated and not fully in line with international treaties and conventions.

C. Violence against women.

Trafficking

Trafficking is one of the critical human rights issues faced by Nepal because it violates several rights of the victim and causes slavery like practice. Various studies, research, and case studies have highlighted the problems faced by the trafficked women and children, who have been deceived by people engaged in human trafficking. In addition, the absence of clear and uniform understanding of trafficking among various offices of His Majesty’s Government has been a problem in addressing the problem by formulating effective legislation and policies. Lately, the number of Nepalese women going overseas for employment is steadily increasing; and it is suspected that a large number of them leave Nepal in conditions that have semblance of trafficking. In order to prevent migrants from being trafficked it is necessary to study, monitor and analyse the details and take appropriate measures to address the problems.

Violence against women alleged to be a Boksi (Witch):

Lately, there has been an alarming rise in the number of women brutally beaten and/or treated inhumanly on alleged charges of practicing witchcraft. Such incidents are occurring in various parts of the country and a number of complaints have been lodged at the Commission. The absence of legislation against superstition and other effective enforcement measures as well as the interest of the authorities have not helped curb the situation.
Domestic Violence and Dowry Related Violence

Domestic violence against women is a major problem in Nepal but very few get reported. The common types of the domestic violence are physical violence, psychological or emotional violence, sexual abuse and economic abuse of women by their husbands or in-laws. The absence of legislation on domestic violence, and orthodox social norms coupled with economic dependency of women on the family has not helped change the situation.

Dowry related violence is another major problem in Nepal. Such violence is most common in the eastern Terai region of Nepal but are spread all over the country in their subtle forms. While the Social Practice (Reform) Act sets a ceiling on dowry and wedding related expenses, the law is blatantly violated by everyone, and even by the senior most lawmakers. The Act needs to be amended to make it pragmatic and effective, and firmly enforced to curb dowry related violence.

Sexual harassment at work and public places:

Sexual harassment is another form of violence against women. In a study on sexual harassment in the workplace, 13.04% of policy makers/civil society, 14.28% of the employers and 40% trade union respondents reported that the sexual harassment is commonly practiced in the executive level whereas 52.17% in the policy makers/civil society, 42.85% of the employers and 60% in the trade union said that it happens in the secretariat/clerical level. Existing laws are not sufficient to address the cases of sexual harassment. The Muluki Ain (Country Code) deals with some specific sexual offences like rape, incest and intention to sexual intercourse. Similarly, the Public Offences and Punishment Act deal with the issue of verbal harassment, but it prescribes minimal punishment for the perpetrators. However, in most cases women are reluctant to report the sexual harassment due to the fear of being further humiliated, or because their complaints would not be taken seriously. Therefore, there is a need to educate the mass about the sexual harassment and amendment of existing laws to adequately address the issues and to properly include the provisions of international human rights instruments to protect women against violence.
D. Child rights with focus on education, exploitative labour and violence.

**Education**

Though primary education is declared free, the goal of universal and compulsory free primary education for all has not been achieved. Nearly 34% of children of Nepal are still deprived of education. Only 15 percent of the Chepangs and 25 percent of the Dalits are literate. Likewise, the literacy rate for boys is 61 percent, whereas it is only 39 percent for girls. Nearly 63 percent of the students either drop out or repeat the 1st grade. Gender disparities in access and performance are significant. Also, only about 37 percent of the primary school age children are expected to complete their primary education within a period of 5 to 13 years. In addition to the access to education, quality of education in most schools, including quite a few private schools, is a serious concern. Only 10 percent of the children entering Grade 1 will complete Grade 5 without repeating and the school drop out rate is very high at primary level. Among the children, the children of ex-bonded labour are the most deprived of their right to education.

The problems have been compounded by the violent conflict between the State and the Maoists. Thousands of schools in the rural areas are either closed or run by very few teachers. A number of schools have been destroyed, several teachers have been displaced from the schools and quite a few have become victims of brutal violence, including murder. The private schools and charity schools have also been affected by the conflict. Lately, frequent forced closures of the schools, and closures resulting from strikes and Bandhs have become another factor affecting the education of children.

**Exploitative Child Labour**

Child labour in Nepal has a long tradition that reinforces the inherent inequality in Nepalese society. The worst forms of exploitative type of work conditions involving children are domestic worker, bonded labour, trafficking, armed conflict, prostitution, drug peddling, scavenging and rag picking, porter, domestic service, small bar and restaurant, overland transportation, auto repair workshops, carpet industries, bricks and tile kilns, match factory, leather tannery, mines and quarries.

Employment of children as domestic helpers is widespread among the middle and upper class families. The statistics on the condition of domestic child workers in Nepal are quite alarming. The average age of a
domestic child labourer is 13; 10 percent of the workers are under the age of 10 and 70 percent fall between the age group of 11 to 14 years. While 49 percent of the child domestic workers have never gone to schools, 40 percent have had to drop their school education; and only 11 percent are attending the school; even among these children, most hardly get time to study at the employer’s home. Sixty-four percent of them work 10 to 14 hours a day and 20 percent work 14 hours a day. Paid leave, rest and recreation are rare. Fifty-one percent of the child domestic workers have poor health and 7 percent have serious injuries. Twelve percent of the children are working as bonded labourers; 32 percent have not been paid wages; and 10 percent have no idea about their wage. More than half (59%) of the workers have suffered from various forms of abuses by the employers and 14 percent are sexually abused. Only 16 percent of employers treat them well.

It is estimated that some of the 36,000 children aged 5-14 years are possibly facing “at-risk” working conditions in the manufacturing and construction industries. Furthermore, estimated 127,000 children are engaged in the worst forms of child labour.

Violence against children

Physically and verbal punishment of children is common in Nepal. The notion that a little bit of beating is necessary for disciplining children is widely accepted and thus practiced. The incidents of physical abuse of children by their employers appear almost regularly in the newspapers and verbal abuse is pervasive. Likewise, many schools allow corporal punishment and there have been incidents of serious incidents of abuse even leading to serious injuries and death. Also, abandonment of children and violence on children, at times resulting to death, are increasing. Other heinous forms of violence against children are sexual abuse and involving children in prostitution. In the year 2002, 91 cases of child sex abuse were recorded. Of the estimated 440 commercial sex workers in Kathmandu, 30 percent were children. In the same year, 137 cases of trafficking were recorded; among them 49 were children. It is reported that about 20% (30,000) of the total number of trafficked women are young girls under the age of 16 years.

Various reports have suggested that a sizeable portion of Maoists militia is underage — 30% of Maoist militia are reportedly children below 18 years of age. Many children have been abducted from the school for the purpose of involving them in violent activities. The children are trained and used not only as soldiers but also as spies and porters.
In addition, the laws of Nepal apparently create a state of confusion in relation to the definition of a child in terms of age. The Children’s Act of Nepal, The Labour Act, The Election Law, The Chapter on Marriage of the Muluki Ain and several other Chapters of Muluki Ain are inconsistent with each other regarding the definition of child.

Access to adequate food, access to health care services, including preconditions for health, access to secure shelter and equal opportunity to participate in economic activities to support the fundamental basic needs are the most pressing issues faced by a large number of population.

In the absence of any of these elements, neither the civil and political rights of the people can be fulfilled meaningfully nor can the hope for creation of a peaceful and just society be realised.

Food

Forty-five districts (60%) of Nepal, a country that once used to export food, are categorized as food-scarce areas. The problem of food scarcity is acute in the hills and mountains, especially in the far western and mid-western regions. Production as well as supply of food in these areas has been seriously affected due to the disturbing political situation. Almost 51% of the population feel that their food consumption is less than adequate due to insufficient food or income; and 63% of the people from the mountain region suffer from lack of access to fertile land, seeds, irrigation, etc. — only 3% report having adequate food. The ongoing conflict has affected production and distribution of food in quite a few remote areas. Under-nourishment has thus been affecting the growth and well being of the people, especially children. Skewed distribution of land, absentee land ownership, and infrastructure related deficiencies are three key factors contributing to food insecurity.

Health

The average life expectancy (59 years) of Nepalese people remains quite low and Nepal is one of the few countries where women live shorter (58 years) than the men. The primary health care services are poor due to understaffing or lack of trained health personnel. Lack of medicine and basic equipment is an acute problem faced by health centres. Most of the rural hospitals do not have sufficient number of doctors and many rural women die at the time of giving birth due to lack of pre-natal health services and absence of trained birth attendants. The lack of trained
medical personnel and birth attendants has contributed to a high infant mortality rate (66 per 1,000 live births) and maternal mortality ratio is 540 per 100,000. Likewise, diarrhoea remains to be a major killer disease.

Access to safe drinking water and safe sanitation facility is the most essential pre-condition to enjoy the right to good health. Statistics show that 88 percent of the households in Nepal have access to an improved source of water, but the quality of drinking water supplied is highly questionable. An overwhelming majority, 72 percent of the rural households do not have access to improved sanitation. The fertility rate is quite high at 4.6%. Despite significant progress, immunisation for DPT and Measles still remains below 75 percent. Additionally, 20 percent of the children suffer from severe malnutrition, 48 percent suffer from moderate malnutrition, and child health problems related to Vitamin A and Iodine deficiencies remain a concern.

In recent years, HIV/AIDS cases have started increasing. There are nearly 60,000 Nepalese living with HIV/AIDS. Unavailability of HIV testing facilities in all the hospitals and health centres has exposed people to the grave risk of HIV transmission through blood transmission. Access to medication is very low due to the high medication costs. Moreover, people with HIV/AIDS face discrimination in hospitals, in the society and within their families as well.

**Shelter**

Housing is one of the basic rights of people, but a very large number of Nepalese people are deprived of this right. The only national housing survey conducted in 1991 reported that about half of the total houses are of the temporary type, about forty percent are semi-permanent and the rest belong to permanent category. Absence of a culturally appropriate low-cost but safe housing policy for rural and urban areas has not enabled the people to exercise their right to adequate housing. Large numbers of people in urban areas live in rented rooms and houses without any regulatory mechanisms to protect their interests/well being as well as the interests of the owners. Due to the centralisation of various key opportunities in the urban areas, the number of people using rented facilities is increasing and will continue to increase in the future.

The problem of squatting is on the rise in urban areas. The 1991 study reported 8.61% of population was squatting and that they fell under the poorest of all household tenure groups. The future of these squatters is uncertain for His Majesty’s Government can remove them from the area at
any time as there have been cases of eviction of settlers to give way to development projects.

Physical and financial problems have been a major obstacle to own a suitable dwelling for the underprivileged such as landless and agricultural labourers, including the recently freed Kamaiyas (bonded labourers), Hali, Gothalo, internally displaced people due to state-Maoists conflict, Dalits, delinquent destitute women, street children, people having certain professions, and the elderly. The problem of housing for poor people, particularly for the labourers and workers, is most acute in the urban areas.

Work

According to the His Majesty’s Government’s Employment Promotion Commission, unemployment and underemployment rates in Nepal are 4.9% and 47% respectively. Since majority (80%) of economically active population are engaged in agriculture, which is mostly a seasonal activity, a large number of people remain underemployed. Underemployment is a major problem contributing to rural-urban migration and lately migration to foreign countries. The number of educated but unemployed people is on the rise partly due to lack of opportunities and partly due to inadequate skills and expertise to enter in the job market.

A forced labour system, involving the entire family of the worker, has existed in Nepal for hundreds of years in an institutionalised manner. Slavery was officially abolished in 1925, but the system of Kamaiya (bonded labour), which has many features of slavery, continued to flourish, especially in the far western districts of Nepal. Whilst His Majesty’s Government abolished the Kamaiya system once again in July 2000 freeing at least 100,000 people from near-slavery condition of work, in the absence of proper policies as well as the problems in implementation of the existing policies, most ex-Kamaiyas are facing problem of finding work forcing many to return to their past masters. Following the declaration, landlords expelled the former Kamaiya from their land. The displaced Kamaiya have been forced to live in emergency makeshift camps where conditions are poor and have not been provided with alternative source of employment. Approximately 13,700 families (60-70,000 people) currently have no land to farm or live on. Moreover, Haliya, Gothalo system, etc. are still prevailing in various parts of the country.

The legal provisions governing minimum wage or other facilities for improving working conditions of workers have not been enforced
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properly. Workers, especially in the unorganised sector, cannot complain about their working conditions or demand wages as fixed by His Majesty’s Government for fear of losing their jobs. And, there is widespread wage discrimination between men and women for the same work. Moreover, those engaged in caste-based occupations, such as sweepers, leather and metal workers, village tailors, etc. seldom earn enough for their family’s survival.

Lately, the trend of seeking jobs overseas has been increasing. Thousands of men and women are becoming migrant workers. In the absence of a proper mechanism to regulate the conditions of employment, many workers have landed in slavery like work conditions or are swindled either by the employers or the employment agencies. This affects the women who work in the Gulf region more acutely.

**F. Laws are inconsistent with the human rights norms and treaty reporting procedure is weak.**

A number of laws are still inconsistent with the norms and values set by the Constitution, international treaties and conventions. The State Case Act, Torture Compensation Act and the recent amendment of the Muluki Ain are only a few examples. Such inconsistencies in the law have been affecting the rights of the people to get justice.

**G. Human rights awareness and education**

The Vienna Declaration and Programme of Action (1993), which was agreed at the World Conference on Human Rights, calls on States to eradicate illiteracy and direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It called on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

There is a serious lack of awareness and education on human rights at all levels. Human rights are not taught in the schools; consequently most people are not aware about their rights, the rights of other people, and the means of protecting them. Many people, including the highly educated, take the notion of human rights as a foreign concept and not applicable to Nepal. The authorities generally demonstrate their apathy towards the issue. Human rights are included in police and military training, but the effectiveness needs to be enhanced to bring about significant and more
visible attitudinal and behavioural changes among the police and army cadres. Most importantly, training of civil servants on human rights is not adequate, especially for those who occupy positions involving quasi-judicial functions. Likewise, political party leaders and cadres are not aware of relationship between good governance and human rights.

The Nepalese society is increasingly becoming intolerant. People who believe in violence as an effective means of resolving differences have created a lasting scar on the nation as a whole. Emergence of such groups has been to a great extent a result of decades old cultural and structural violence ingrained in the society. Unless and until the root issues are addressed through human rights education and awareness with special focus on the issues affecting the marginalized and weaker groups of people, there is a risk of renewed or new form of conflict.

H. Impunity

State authorities and non-state parties are often involved in acts that violate law. The situation has aggravated due to the conflict between the state and the Maoists. Excessive use of force, arbitrary arrests, illegal detention, torture, disappearance of citizens and journalists by the state have become common. Likewise, the Maoists are equally or more involved in abduction, extortion, torture, killing and use of human shields. The tendency of ignoring the recommendations/instructions of National Human Rights Commission by the state authorities to investigate and take necessary legal action against the alleged perpetrators is common. Some authorities ignore even the orders of the Supreme Court.

It is also found that the perpetrators are often transferred or even awarded instead of making them accountable for their wrongdoings. The mindset that one can get away with deliberate ignorance of court orders and thereby violate human rights is strong and common among the authorities. Moreover, the practice of the state bearing the burden of compensation to the victims of human rights violation without making the individuals responsible for such act calls for separating individual liability against state/institutional liability to discourage both the individual and the state from violating human rights. Thus, impunity has been a serious obstacle in ensuring rule of law and protection of human rights of the people in accordance with the Constitution of Nepal, along with various laws and international human rights treaties to which Nepal is a party.

It is not satisfactory that the army and the police use internal disciplinary procedures to deal with serious human rights violations caused by their
personnel. The Government’s practice of shouldering the responsibility of compensating the victims of human rights violation for the crime committed by its employee is also not helpful to change the situation, not to mention that it is a gross misuse of taxpayer’s money. The prosecution system is weak and often ineffective to prevent reoccurrence of similar crimes. Moreover, there is no provision to bring to justice the Maoists who have committed heinous crimes like rape, murder, abduction, extortion etc. As a result, the faith of the people in the rule of law has declined.

**STRATEGIC OBJECTIVES**

Promotion and protection are two key statutory tasks of National Human Rights Commission. The most important statutory task of the Commission concerning the protection of human rights is to conduct inquiries or investigations on complaints received from the victims or any person on his/her behalf, or upon information received from any source, and ensure that the victim(s) get(s) the justice. In this regard, the Commission will always receive and act upon individual complaints or take initiative on reports of human rights violation to protect human rights in Nepal as its priority statutory function. In case of the latter type of violations requiring *suo moto* action of the Commission, the priority will be given to the cases that fall under the areas covered by the strategic objectives.

For the next five years starting from January 2004, the Commission will strive to achieve the following 8 strategic goals, grouped in programme and management categories, while executing the above stated statutory duty.

**A. Programme Objectives**

The Commission has set the following seven programme objectives on the basis of the stakeholders’ recommendations and its own experience on priority human rights issues in Nepal and its statutory responsibilities, as stipulated in the Human Rights Commission Act.
STRATEGIC OBJECTIVE 1

To contribute to the peace building process by ensuring that the parties to the conflict are fully in compliance with the international standards for human rights and humanitarian law.

Key priorities will be:

- Monitoring, backed by improved outreach, and ensuring that the parties in conflict respect human rights.

- Studying, investigating and documenting disappearances, human rights violations, internal displacement and following up.

- Drawing attention to discuss and agree to resolve

Expected Results of SO 1

1. His Majesty’s Government and the Communist Party of Nepal (Maoist) agreed to respect human rights with an appropriate mechanism.
2. Respect for human rights and humanitarian principles established.
3. Adherence to the human rights principles by the His Majesty’s Government and the Maoists in the process of finding peaceful and lasting solution to the conflict.
4. Conflict victims received justice.
5. HMG plans and implements resettlement of the displaced people.

the socio-economic issues that have been inflicting structural violence in the society.

- Ensuring that justice is given to the victims of conflict by making the perpetrators accountable for their actions.

- Enforcing the Common Article 3 of the Geneva Convention and causing/facilitating domestication of international humanitarian law.

- Actively engaging key stakeholders in dialogue and discussion to find a solution to the problem.

Monitoring of post-conflict situation.
STRATEGIC OBJECTIVE 2

To promote, monitor and enforce the guarantee of fundamental rights of the people with focus on the right to life, liberty, justice and equality.

Key priorities will be:

- Causing changes in the existing legislation and in the practices to bring them in line with the fundamental rights to life, liberty and equality guaranteed by the Constitution and prevailing laws as well as by the international standards on human rights, irrespective of ratification or non-ratification. This will include protection of citizens’ lives from torture, illegal arrests and detention, negligent practices and malpractices; ensuring administrative and punitive measures to address caste-based-discrimination; gender and sexual orientation based discrimination, discrimination faced by indigenous people, and discriminatory practice in wage system.

- Causing changes in the building codes governing construction of offices (public and private), buildings, hotels, hospital road, footpath, etc. to increase the accessibility of people with physical disability.

- Influencing His Majesty’s Government policies to promote and protect access to opportunities for marginalized groups and promote ethnic languages.

- Working with judiciary and professional bodies to improve the opportunity to receive fair trial.

- Pursuing significant improvements in the penal system.

- Bringing the profit and non-profit sectors under the purview of human rights standards.

- Protecting equality rights of vulnerable groups such as elderly people, people with disability, Dalits, and minority indigenous people - Chepang, Praja and Raute, etc. -, and protecting the culture and identity of indigenous communities.

- Initiating a study on the effect of abuse of authority and its effect on human rights.
Expected Results of SO 2

1. Legislation fully protects the right to life of the citizens from the state and non-state parties.
2. Full protection of fundamental rights.
3. Circumstances for receiving fair trial improved.
4. Significant improvements in the penal system and detention centres.
5. Legislation and codes protect people from discrimination and significant improvements in the enforcement of the laws.
6. Opportunities for marginalized groups to participate in politics and civil service enhanced.
7. Increase in the level of adherence to the fundamental rights by the Non-state parties.

Monitoring of the respect for the fundamental rights and taking prompt action in cases of violation of the fundamental rights.

STRATEGIC OBJECTIVE 3
To advocate right to food, health, shelter, education and work as the fundamental rights of the people with special attention to improving the human rights situation in the most underdeveloped regions of Nepal.

Key priorities will be:

- Pursuing His Majesty’s Government to define appropriate national standard/s for right to food, health, shelter, education and work.

- Pressing for constitutional and/or legislative changes to ensure that the citizens are able to fully exercise those rights.

- Pursuing His Majesty’s Government to effectively implement its plan of action to address the food security problem in chronic food deficit areas.

- Conducting national level research on the impact of globalisation on household food security, on bonded labour, on the rights of farmers, workers (including health, education and status of women and children workers) and Nepali migrant workers from a human rights perspective.

- Raising awareness on economic, social and cultural rights and building the capacity of human rights NGOs and civil society to defend these rights.
- Monitoring the condition of ex-Kamaiyas, Haliya, Gothala and similar practices; and pursuing His Majesty’s Government to take actions to address their rights.

- Monitoring and enforcing minimum wage and equal wage requirements.

- Ensuring that His Majesty’s Government enacts effective laws to guarantee rights of the workers engaged in informal economy and properly regulates and monitors the contractual arrangements and conditions of Nepalese migrant workers.

- Pursuing adoption of/changes in policies and the legislation for culturally appropriate and affordable housing for rural and urban poor, and protection of tenancy rights.

- Working with the stakeholders to declare the children, hospital and medical facilities and sites of cultural heritage as Peace Zones.

- Monitoring the progress of His Majesty’s Government on its implementation of the universal and free quality primary education policy and free quality basic health care services.

Monitoring of implementation of ESCR components of the National Human Rights Action Plan of the His Majesty’s Government.

**Expected Results of SO 3**

1. Legislative and policy changes respecting the right to food, health, shelter, education and work.
2. Effective implementation of a plan of action to address food security in food scarce regions.
3. Concrete measures to address the employment problem of ex-bonded labourers.
4. Principle of minimum and equal wage is enforced in all 75 districts.
5. Housing policy for the poor.
6. Protection of migrant Nepali workers from fraud, unjust and exploitative labour conditions.
7. Universal and compulsory free quality primary education and protection of right to education of every child.
STRATEGIC OBJECTIVE 4

To help improve the legislative and regulatory mechanisms for control and cessation of: a) domestic and dowry related violence against women and b) trafficking in women and children.

Key priorities will be:

- Advocate revision of the definition of trafficking under the existing laws and improvisation of South Asian Association for Regional Cooperation treaty on trafficking.

- Causing changes in the Muluki Ain (National Code), Human Trafficking (Control) Act, Labour Act and immigration laws to bring them in line with the provisions of international treaties.

- Causing formulation of effective policies for relief, rehabilitation, repatriation and integration.

- Monitoring the action taken against the incidents of trafficking and produce annual report for submission to the His Majesty’s Government and United Nations. It includes monitoring of work-related-migration of Nepalese citizens to foreign countries and ensuring that His Majesty’s Government puts adequate mechanisms to regulate and monitor the situation.

- Commissioning researches to identify the magnitude of trafficking of women (in conjunction with the research on trafficking of girls), and prevalence of sexual harassment at work and in public places.

- Building collaboration with the national regional and international to curb cross-border human trafficking.

- Networking with different stakeholders.

- Pursuing His Majesty’s Government to enact/amend/enforce legislations to prevent and control domestic violation, to curb the practice of dowry/dowry related affairs and to prevent the violent and inhuman treatment of women under the charge of witchcraft.

- Building database on violation of women’s rights in the areas of sexual harassment, domestic and dowry related violence and trafficking.
Monitoring the implementation of the component of the Human Rights Action Plan concerning women’s rights.

Expected Results of SO 4

1. Common definition and understanding on human trafficking is in place.
2. Legislation to curb domestic violence and superstition are in place and the legislation on control of human trafficking is fully in line with UN Protocol on Trafficking.
3. Significant improvements in His Majesty’s Government’s regulatory and monitoring arrangements to control trafficking, domestic violence, dowry related violence and sexual harassments.
4. Developed and implemented joint programmes with NHRIs to curb cross-border human trafficking.

STRATEGIC OBJECTIVE 5

To help improve legislative, monitoring and enforcing arrangements for the elimination of violence against children in the form of trafficking, abuse, exploitation and the use of children in conflict.

Key priorities will be

- Causing development and implementation of a code of conduct relating to child labour applicable to His Majesty’s Government employees and members of parliament, constitutional bodies and various commissions who receive state funding.

- Influencing His Majesty’s Government to improve its regulatory and monitoring mechanism to protect the children from exploitative form of child labour, especially domestic, restaurants, factories and quarries; and monitoring the work of His Majesty’s Government in the areas of juvenile justice system.

- Independent monitoring of trafficking of children and the effectiveness of monitoring mechanisms of the state.

- Conducting a research to identify the magnitude of child trafficking (in conjunction with the research on trafficking of women).
- Initiating enactment of new legislation, or amendment to existing legislation to protect children from abuse, including corporal punishment in schools.

Investigating the use of children in conflict and put pressure on the parties responsible for correcting their act.

**Expected Results of SO 5**

1. Code of conduct on child labour for the persons and organisations who receive state funds is developed and implemented by the His Majesty’s Government.
2. Legislation affecting children are consistent on the definition of child and fully in line with CRC and other relevant international treaties and conventions.
3. Significant improvements in regulatory and monitoring arrangements to curb the violence against children at work place, schools and home.
4. Mechanism to discourage the use of children in worst form of labour work in place.
5. Prevented the use of children in conflict.

**STRATEGIC OBJECTIVE 6**

To improve the extent to which international treaties and conventions on human rights are ratified, domesticated and implemented in Nepal.

**Key priorities will be:**

- Pursuing/facilitating His Majesty’s Government to ratify all outstanding international treaties, conventions and optional protocols relating to human rights and to submit quality reports to the treaty bodies in time with the comments of NHRC.

- Reviewing the existing legislation by assigning priority to those that are related to the Strategic Plan 2004-2008 and the draft bills that are being submitted to enact legislation to ensure that they comply with the constitutional guarantees and the international standards on human rights.

- Ensuring that torture is dealt with as a serious crime with harsh punitive measures in Torture Compensation Act.
- Improving the application of international human rights norms in the court while litigating legal cases with an aim to address the factors that have been impeding the right to fair trial.

Expected Results of SO 6

1. All major treaties, protocols and major optional protocols including the statute on the establishment of International Criminal Court ratified.
2. Significant improvements in treaty reporting by His Majesty’s Government.
3. Amendments of existing legislation or introduction of new legislation completed to domesticate newly ratified treaties and to remove the inconsistencies.

STRATEGIC OBJECTIVE 7

To promote, develop and provide education, information and advice about human rights.

Key priorities will be:

- Pursuing inclusion of human rights education in school curriculum and in non-formal education packages.

- Ensuring that human rights education is a core subject in the staff-training programme of the Ministry of General Administration, or of the appropriate ministry in-charge of staff training.

- Ensuring that His Majesty’s Government officers with quasi-judicial responsibilities are properly prepared by the respective departments to execute their quasi-judicial duties within the frame of the Constitution and in accordance with the international human rights standards.

- Educating and raising awareness of key policy makers, Regional Administrators and Chief District Officers.

- Disseminating human rights information to the public officials and professional groups.

- Ensuring that the concerned authorities properly train security and army personnel before deploying them to active duty, and follow-
trainings are provided to them to reinforce the knowledge and behavioural changes.

- Promoting application of international standards of human rights in legal case building, litigating, and imparting justice.

Carrying out highly selective high impact promotional work in support of the above interventions and Strategy Number 1 to 6 and on emerging human rights issues.

**Expected Results of SO 7**

Human rights curriculum part of core curriculum of schools and training programme of His Majesty’s Government employees. Increased knowledge and awareness about human rights have brought positive attitudinal changes among the authorities and the people.

**B. Management Objective:**

In order to achieve the above programme objectives and also in response to the feedbacks from the Stakeholders, the National Human Rights Commission will be pursuing the following management objective.

**STRATEGIC OBJECTIVE 8**

To transform the image of the organisation by increasing its efficiencies (managerial and technical) and acceptance across all sections of Nepalese society.

**Key priorities will be:**

- Team building and formulating code of conduct governing the discipline of the Members with strict punitive measures to deal with any violation of the agreed code.

- Amending the Human Rights Commission Act, 1997 (B.S. 2053) to ensure that the provisions of the Act are in line with the requirements of the Paris Principles and to bring changes in the existing provisions to execute given mandates effectively, especially in the area of investigation and action.

- Rigorously implementing the core values — equality, impartiality, accessibility, accountability, transparency, and independence and autonomy - and demonstrating the commitment to promote and protect
the human rights of everyone by following the principle of impartiality.

- Improving the complaint handling procedures to make them efficient in terms of time taken to enquire and to decide on the case.

- Learning from well established NHRI s and international human rights organisations through work attachment and highly structured training programmes to develop specialist knowledge.

- Developing responsive and efficient management practices and culture within NHRC.

- Improving its public relation by developing media strategy.

- Improving terms of employment to attract competent and motivated human rights professionals and to retain good staff, and introducing performance based appraisal system.

- Investing in human resource development to implement the strategic objectives and to develop specialists in specific areas of human rights.

- Streamlining administrative rules and procedures governing the expenditures under the state funding and other funding.

- Systematizing the office operations, introducing procedures for various operational work, and increasing the level of office automation.

**Expected Results of SO 8**

1. NHRC’s public image has improved further.
2. NHRC has become efficient, accountable, transparent and professional national level human rights institution.
MEANS OF ACHIEVING THE STRATEGIC OBJECTIVES

The NHRC intends to achieve its strategic objectives by:

A. Making the most out of the Human Rights Commission Act, 1997 (B.S. 2053)

The NHRC will implement and enforce all the provisions of Human Rights Commission Act, 1997 (B.S. 2053) to the optimum level to bring about positive changes in the attitude and behaviour of human rights violators.

B. Reorganizing and enhancing organizational capacity

- The Office of the National Rapporteur on Trafficking in Women and Children will be entrusted with the programme responsibilities related to the issues of women and children being addressed by this strategic plan. The Office will be strengthened and integrated to NHRC’s structure for optimum and effective use of human resources. Existing staff positions and the need for new positions will be reviewed by January 2004 with the assistance of United Nations Development Programme led capacity development project of the NHRC.

- The role and the authority of the Secretary of the NHRC will be clearly spelled out taking the needs of the NHRC and the experiences of other NHRIs by February 2004.

- Introduction and enforcement of a code of conduct for the Members and the staff by February 2004.

- Additional staff already identified during the re-structuring exercise in the past, but so far not recruited due to budget constraint, and new posts will be recruited by March 2004.

- A plan of action for decentralization of decision-making process for efficient execution of daily work, especially complaint handling, will be prepared and implemented. The complaint handling procedure, which is in early phase of development, will consider the experience of this arrangement and further refine the procedures by February 2004.
- Recruitment of senior level professionals to support the NHRC in improving management, administration and implementation of the strategic plan by February 2004.

- Mobilizing external resources in conjunction with program activities to make the salary and benefit packages of the staff are appropriate to retain and draw highly motivated and able people to meet the challenges.

- Finalizing the draft human resource development policy and developing staff training and development plan by October 2003 to effectively implement the strategic plan.

- Recruitment of experts and trainers to help the NHRC in its interventions.

- Interim arrangements, pending revision in Human Rights Commission Act, 2053, to increase participation and representation of women, Dalits, indigenous people and Janajatis at the policy level work of the NHRC will be put in place by February 2004.

- Achieving participation of women, Dalits and ethnic groups fifty percent of the rank and file of the NHRC by the end of the plan period.

- Amendment of Human Rights Commission Act, 1997 by year 2004 with the necessary support of all key stakeholders.

- Development and implementation of staff rules and regulations for recruitment of staff on fixed term contract basis and for various others technical and non-technical services by December 2004.

- Development and implementation of periodic performance evaluation system for all Members and the staff by January 2004.

- Expedite the work on the decentralized complaint handling procedure and automated complaint handling system with an aim to complete it by June 2004.

- Creation of a professional media desk to handle all press releases and to promote the NHRC and its work through effective collaboration with media by February 2004.

- Create fund to meet the obligations to the Members and the staff by January 2004.
- Begin process (from January 2004) to acquire land for NHRC office.

C. **Building allies, partners and constituency**

- Developing allies in the key ministries and formulating an effective lobbying strategy at the parliament to advance the cause of human rights.

- Preparing and implementing joint plan of action with the National Women’s Commission, National Dalit Commission, the Foundation for Indigenous Nationalities and other umbrella organisation working for the rights of the ethnic people on human rights issues being addressed by the strategic plan.

- Working closely with the political parties to make promotion and protection of human rights as their key agenda.

- Working closely with the Human Rights Committee of the House of Representatives on the matters concerning human rights.

- Working with the human rights cells of police, armed police, army and the Home Ministry as well as other focal points.

- Developing professional relationship with the media and cultivating their support for the cause of human rights and supporting the media, in national level as well as in the regions and districts, by sensitising editors and journalists in reporting news from human rights angle.

- Working closely with the human rights non-Governmental organisations and professional bodies like, courts, Nepal Bar Association, Society of Judges and Group of His Majesty’s Government Attorneys in implementation of key interventions and soliciting their views and opinions on human rights issues.

D. Expanding accessibility to NHRC

- Establishment of the first two regional offices in mid-western region and in eastern region by the end of 2004, and the third and fourth in two other regions by the end of 2006.

- Collaboration and networking with human rights non-Governmental organisations, civil society and human rights activists, etc. to expand outreach and accessibility to the districts and villages.

- Creating and fielding mobile teams for complaint receiving and investigating.

E. Mobilizing resources

- Actively lobby for sufficient financing from the state based on a detailed budget.

- Tapping resources, if and where possible, of National Women’s Commission, National Dalit Commission and National Foundation for Development of Indigenous Nationalities (Janajati Uttahan Pratisthan) for the activities related to women, Dalits and Janajatis respectively. As an interim arrangement, co-funding arrangements will be promoted to address budget shortcoming.

- Mobilizing external resources, which are unconditional and can be used for implementation of the strategic plan.

- Solicit advice and expertise of international human rights organizations with experience in fund raising, conducting market study and preparing a strategy for domestic fund raising.

- Explore possibility of obtaining expert volunteers from agencies like United Nations Volunteers and others.
F. **Budget:**

A tentative budget for the five-year period is as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Cost in NRs.</td>
<td>49,243,000</td>
<td>64,830,000</td>
<td>49,205,000</td>
<td>42,053,000</td>
<td>38,680,000</td>
<td>244,011,000</td>
</tr>
<tr>
<td>HMG Contribution in NRs</td>
<td>6,300,000</td>
<td>6,300,000</td>
<td>6,300,000</td>
<td>6,300,000</td>
<td>6,300,000</td>
<td>31,500,000</td>
</tr>
<tr>
<td>Available/Likely to be Available from External Sources in NRs</td>
<td>42,943,000</td>
<td>58,530,000</td>
<td>42,905,000</td>
<td>35,753,000</td>
<td>32,380,000</td>
<td>212,511,000</td>
</tr>
</tbody>
</table>

NOTES: HMG contribution is expected to increase to meet the entire cost of the Strategic Plan. 
NRs. 13,431,680.00 available for year 1.
NRs. 38,512,425.00 available for year 2.
Total: 68,024,109.00 available.
RISK MANAGEMENT

A. Issues concerning coordination and teamwork among the Members may continue to affect its public image and standing in adverse manner affecting the effectiveness of the organisation.

- Conflict resolution and team building exercises will be systematically carried out to address dissatisfactions or interpersonal problems.

- A detailed and specific code of conduct will be developed for the Members. It will include the code of practice, stated in Accountability (Part 5), for communication with external parties. The code of conduct will have effective punitive measures against persons violating the provisions of the code. The Commission will seek help of expertise to develop such codes. The code will be given proper media coverage and put on the web for the information of the stakeholders. This will be done by November 2003.

- The Commission will not be lenient on its Members or staff on any improper action that jeopardizes organization’s integrity, credibility and reputation.

B. External stakeholders and staff of the Commission are of the opinion that all the Members need to be committed to promotion and protection of human rights and most importantly be result oriented. Besides, skewed distribution of workload among the Members and a weak monitoring of their execution can reduce the ability of the Commission to achieve the strategic objectives.

- Each Member will be assigned to a specific area of responsibility based on the strategic objectives and mandatory function of effectively receiving and handling complaints. All the Members will prepare their respective work plans. The work plans will be shared, discussed, and agreed among the Members. The work plan will be backed by a performance appraisal system, similar to the one planned to be developed for the staff.
- The performance appraisal system will be put in place by January 2004. In addition, the Members will frequently review the level of progress in the implementation of the strategic plan and make everyone accountable to their individual responsibilities. The significant accomplishments of the Members will be appropriately posted on the website with an aim to enhance the public image of the organization. For effective implementation of this arrangement, the Chairman will be assisted by an expert.

C. Further deterioration of conflict and political situation in the country will aggravate already deteriorated human rights situation in the country and make the Commission’s work very difficult.

- Peace with human rights being the priority area, the Commission will make use of all possible means to contribute to the sustainable resolution of the conflict from human rights perspective under its first strategic objective noting that the situation is not under control of the Commission.

- A contingency plan will be prepared to effectively respond to worst possible scenario.

- Since the task related to conflict and human rights requires high degree of concentration and very intense effort a team of two Members will be formed and assigned fulltime to this strategic objective until a lasting resolution of the violent conflict is found.

D. Inadequate funding from and an indifferent attitude of His Majesty’s Government on human rights will continue to remain as the major hurdles in effective complaint handling and implementation of strategic plan. As a result, on the one hand the state will feel “absolved of” the responsibility to adequately fund the Commission and on the other hand the Commission may not be able to implement its strategic plan in a timely and independent manner.

- The Chairman and the Members will actively advocate and lobby for state adherence to the Paris Principles governing guaranteed adequate funding of national human rights institutions. In addition, they will make use of the
opportunity, if any, to make the Commission a constitutional body warranting compulsory funding from the core fund of His Majesty’s Government.

- The Commission will build allies within His Majesty’s Government to advocate the cause of human rights in Nepal, and mobilize the support of national and international community in this regard.

- Periodic workshops and meetings with the key HMG ministries to make them aware of the Commission’s role and responsibilities will be organised.

- Solicitation of external funding from donors, who attach human rights as priority agenda, as an interim measure will continue.

- Prepare in-country additional fund raising strategy with the help of experts from international human rights organizations that are experienced in fund raising from the public.

- Create an endowment trust fund to achieve long-term financial sustainability.

E. Slow changes in the legislation due to apathy or lack of commitment to ratify the treaties and to domesticate the treaties.

- The Commission will lobby and make state authorities aware of their human rights treaties or non-treaty obligations to the people and international community and mobilise necessary support from the civil society, professional bodies, and international community, as necessary.

- The experience of the Chairman and the Members will be used to expedite this task.

- The Commission will work with the HRNGOs and civil society on their role and responsibilities in this area.
APPENDIX 5

MINIMUM IMMEDIATE STEPS FOR HUMAN RIGHTS PROTECTION
(Submitted to His Majesty’s Government of Nepal)

10 March 2004

Introduction

Further to the National Human Rights Commission’s letter to His Excellency the Prime Minister, dated Monday 8 March 2004, NHRC hereby provides its recommendations for immediate steps needed to protect human rights.

These recommendations are part of NHRC’s Statutory mandate, and they are based on the main trends found as part of the on-going work of NHRC since its effective establishment in April 2000. These trends are indicated by the one thousand eight hundred (1800) complaints received as well as the field monitoring carried out in 58 Districts of Nepal since June 2002, and most recently in 38 Districts (since January 2004). Based on the number of incidents of human rights violations, NHRC is of the view that the complaints it receives is only a small proportion of human rights violations suffered. Of the complaints it has received, over 90% are related to the armed conflict.

These trends include some of the gravest challenges to the human rights of the people of Nepal - the demonstrated impunity of the armed services of the state for torture as well as rape, forced disappearances, arbitrary detention and executions. In this context, it is the Statutory duty of NHRC to identify how Nepal is falling short of its international human rights commitments, and to advise HMG on the immediate, practical steps needed by HMG to meet those minimum standards.

All of the minimum steps advised here are based on existing international standards which Nepal is committed to uphold and insofar as the Constitution of the Kingdom of Nepal reflects these.

As part of its on-going work, data gathered during recent field monitoring concerning grave on-going abuses of human rights by CPN-Maoists, as
well as on-going human rights violations by the state will be analysed and published, as usual, in due course.

NHRC emphasises that the prime responsibility and duty to promote and protect human rights lies with the State of Nepal. It must do this, for example, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

In accordance with its independent and autonomous Statutory role, NHRC therefore submits the following recommendations to HMG. Based on trends found by NHRC, these recommendations are the minimum immediate steps needed to demonstrate HMG’s preparedness to respect and ensure respect for human rights in the current crisis.ii

The NHRC recommendations are in the sequence below. NHRC emphasizes to His Majesty’s Government that it holds itself ready to assist it in implementation of these nineteen recommendations with other relevant partners.

I. GENERAL

1. Obligation to respect and ensure respect for human rights
2. Right to an effective remedy – address impunity
3. Prohibition of Discrimination

II. SPECIFIC MINIMUM STEPS

4. Protection of the right to life
5. Protection of the right to Liberty: including protection from forced or involuntary disappearance
6. Protection from torture or inhuman or degrading treatment or punishment
7. Effective investigation and prosecution for the above crimes
8. Protection of right to fair trial
9. Freedom of Movement and humanitarian relief
10. Protection of the Internally Displaced
11. Freedom of expression, assembly, association
12. Freedom of religion
13. Civil society and human rights defender
14. Protection of the human rights of women
15. Protection of the human rights of children
16. The right to participate

III. MONITORING COMPLIANCE WITH HUMAN RIGHTS

17. Monitoring compliance with minimum standards by NHRC
18. Co-operation with NHRC mandate
19. Pledge of support

RECOMMENDATIONS

I. GENERAL

1. Obligation to respect and ensure respect for human rights
HMG should immediately adopt such measures as are necessary to give effect to the human rights obligations applicable to Nepal. HMG should respect, and ensure respect, for human rights by all their agents, affiliated agencies, supporters and sympathizers. This obligation includes groups such as any “Rural Volunteer Security Groups and Peace Committees”.
HMG shall take, and ensure that others take, the immediate steps set out in these recommendations.
Among those steps, HMG shall ensure that these recommendations are urgently brought to the attention of military and law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

2. Right to an effective remedy – address impunity

NHRC findings reveal a trend of impunity when state forces are alleged to commit human rights violations of the gravest kind. Part of this trend is failure to ensure the effectiveness of key remedies which must be available through the judicial system, such as habeas corpus.
HMG shall therefore ensure:
a) That any person whose human rights are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. To address impunity for grave human rights violations, more specific guidance is provided to HMG in the recommendations below.

b) That any person claiming such a remedy should have his right thereto determined by a competent authority provided for by the legal system, and to develop the possibilities of judicial remedy;

c) That the competent authorities shall enforce such remedies when granted. Specifically, HMG shall ensure that summonses and other court orders, as well as judgements, are effectively enforced.

3. Prohibition of Discrimination

HMG shall reaffirm its commitment to respect and to ensure human rights to all individuals in Nepal without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, sexual orientation, national or social origin, property, birth or other status. HMG shall ensure that the law prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any such grounds.

II. SPECIFIC MINIMUM STEPS

4. Right to life

Every human being has the inherent right to life. Given that the death penalty has been abolished, HMG shall ensure that no executions of any kind are carried out. HMG shall ensure this right is protected in all contexts, including armed conflict.

NHRC emphasises that the work of military and law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials. A threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole.
They have a vital role to play in the protection of the right to life, liberty and security of the person as required by Nepal’s international commitments.

However, NHRC has found that current arrangements are failing to ensure respect for minimum standards of protection of the right to life, and are failing to ensure public confidence in the effectiveness and independence of investigations into such allegations.

Therefore, the paragraphs which follow outline how HMG is required to protect the right to life whether in situations of internal armed conflict, excessive or illegal use of force by a public official or regarding deaths occurring in custody.

Protection from execution: HMG shall immediately take the following steps:

a) **Prevention:** HMG shall ensure that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty; and that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

b) HMG shall ensure that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: i) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (ii) Minimize damage and injury, and respect and preserve human life; (iii) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (iv) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. (v) Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors in order that the independent investigation body required (below) is promptly initiated.
c) HMG shall ensure not only that all executions are prohibited by law but that they are punishable by appropriate penalties which take into account the seriousness of such offences.

d) HMG shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody or imprisonment, as well as those officials authorized by law to use force and firearms. This has particular relevance for any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

e) HMG shall ensure the prohibition of orders (from superior officers or public authorities) authorizing or inciting other persons to carry out executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize this.

f) HMG shall ensure that effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of execution, including those who receive death threats (see also the recommended witness protection legislation below).

Protection from excessive use of force: NHRC findings indicate that a trend of arbitrary or abusive use of force and firearms by law enforcement officials exists. To address this, HMG shall immediately take the following steps:

a) Reporting and review procedures: HMG shall ensure effective, transparent, independent and timely reporting and review procedures are established for alleged arbitrary or abusive use of force and firearms by law enforcement officials. HMG shall also ensure that the independent investigation body (below) and administrative or prosecutorial authorities are in a position to exercise jurisdiction to ensure that such acts are promptly prosecuted and punished as a criminal offence under Nepali law;

b) HMG shall ensure that, in cases of death and serious injury or other grave consequences, a detailed report is sent promptly to the investigation body (below) and to competent authorities responsible for administrative review and judicial control.

c) HMG shall ensure that persons affected by the use of force and firearms or their legal representatives shall have access to an
independent investigation and judicial process. In the event of the death of such persons, this provision shall apply to their dependants.

d) HMG shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

e) HMG shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with these minimum standards, refuse to carry out an order to use force and firearms, or who report such use by other officials.

f) HMG shall ensure that law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command when (as at present) no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported an alleged violation of human rights to NHRC or to other lawful authority.

g) HMG shall ensure that obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

h) Regulations and rules of engagement: HMG shall adopt, publish and implement regulations and rules of engagement on the use of force and firearms by law enforcement officials which reflect the standards set out here, and keep these constantly under review in co-operation with NHRC;

i) Means and equipment: HMG shall ensure a range of means as broad as possible and equipment for law enforcement officials with various types of weapons and ammunition that allows for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.
For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind;

j) HMG shall carefully evaluate, in co-operation with NHRC, the development and deployment of non-lethal incapacitating weapons in order to minimize the risk of endangering uninvolved persons, and carefully control the use of such weapons;

k) Qualifications, training and counselling: HMG shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

l) HMG shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use. This includes any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

m) HMG shall ensure that law enforcement agencies review their training programmes and operational procedures in the light of the NHRC findings. In particular, HMG shall ensure that law enforcement agencies, in providing training, fully integrate issues of police ethics and human rights in the content and method used, especially in training regarding the investigative process, including alternatives to the use of force and firearms, the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.

n) HMG shall ensure that stress counselling is compulsory for law enforcement officials who are involved in situations where force and firearms are used; as well as adequate home leave.
5. **Right to Liberty: including protection from forced or involuntary disappearance**

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention; and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The findings of NHRC regarding a trend of enforced disappearances by the state, and regarding a trend of impunity in defiance of the justice system of Nepal is an offence to human dignity and a flagrant violation of the human rights Nepal has undertaken as the standard of its behaviour towards its people.

HMG should take immediate effective steps, whether legislative, administrative, judicial or other, to prevent and terminate acts of enforced disappearance in Nepal. Only this will demonstrate that HMG does not permit or tolerate enforced disappearances. Specifically,

a) **Arrest:** HMG shall ensure that anyone who is arrested is informed, at the time of arrest, of the reasons for his arrest and should be promptly informed of any charges against him. An arrest may be made only if ordered by the competent authority in writing and in accordance with the law. The arrest must be carried out by officers who are properly identified as such. No one should be placed under arrest as a means of intimidation or for the exercise of their human rights. In particular, arrests should not be made at night, except in the case of individuals caught ‘red-handed’.

b) **Detention:** HMG shall ensure that no one in custody should be held incommunicado or in secret detention. Any person deprived of liberty should be held in an officially recognized place of detention. Anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and should be entitled to trial within a reasonable time or to release. Accurate information on the detention of such persons and their place or places of detention, including transfers should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned. It should not be the general rule that persons awaiting trial should be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial
proceedings, and, should occasion arise, for execution of the judgment.

c) **Communication:** HMG shall ensure that any person who has been arrested should have the right to be assisted without delay by legal counsel of his own choosing and the right to communicate freely and privately with such counsel. Anyone who is deprived of his liberty by arrest or detention should be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. The HMG should immediately take such steps as are necessary to guarantee the effective enjoyment of the right to habeas corpus, to determine the whereabouts or the state of health of persons deprived of their liberty and to identify the agents who ordered or carried out the deprivation of liberty. HMG shall ensure that impediment of these remedies is a punishable offence under law, and that anyone who provides false information to the NHRC shall be subject to legal proceedings and punished.

d) **Responsibility:** HMG shall ensure the broadest possible publicity should be given to these minimum standards among the public at large and, in particular, among authorities or officers in charge of detention centres (in accordance with recommendation 1 above). HMG shall reaffirm that NHRC and other competent authorities have right of access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found (see recommendation 18 below).

e) HMG shall ensure that all acts of enforced disappearance are an offence under criminal law punishable by appropriate penalties which take into account their extreme seriousness. Mitigating circumstances may be established in legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance. In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law.

f) HMG shall ensure that no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction has the right and duty not to obey it. HMG shall ensure
that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited. Training of law enforcement officials should emphasize these provisions.

g) HMG shall ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment (as well as for officials authorized by law to use force and firearms). This has particular relevance for any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

h) **Information on detention:** HMG shall ensure that an official up-to-date register is kept of all persons deprived of their liberty should be maintained in every place of detention. Additionally, HMG shall ensure centralized registers are maintained. The information contained in these registers should be made available to the NHRC, to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority or anyone entitled under any international legal instrument to which Nepal is a party, seeking to trace the whereabouts of a detained person.

i) HMG shall ensure that all persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

j) HMG shall ensure that clear rules are established by law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

k) HMG shall ensure that persons alleged to have committed any of the acts referred to in section is suspended from any official duties during the investigation. They should be tried only by the competent civilian courts, in particular not in military courts. No privileges, immunities or special exemptions should be admitted in such trials.

l) HMG shall ensure that the persons presumed responsible for such acts are guaranteed fair treatment at all stages of the investigation and eventual prosecution and trial (see fair trial below).
m) HMG shall ensure that persons who have or are alleged to have committed offences in this section, should not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance should be taken into account.

n) HMG shall ensure that victims of acts of enforced disappearance or unlawful or arbitrary arrest or detention and their family obtain redress and have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants are also entitled to compensation.

o) NHRC findings indicate legislation which does not meet these minimum standards. HMG shall immediately take such steps as are necessary to suspend the operation of the Terrorism and Disruptive Activities (Control and Punishment) Act 2002, with a view to it being repealed. HMG shall ensure civilian authority and control over all state armed forces in accordance with democratic principles.

6. **Prohibition of torture or inhuman or degrading treatment or punishment**

No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. There are no exceptions. It is the duty of HMG to afford everyone protection through legislative and other measures as may be necessary, whether the act is inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. No justification or extenuating circumstances may be invoked, including those based on an order from a superior officer or public authority. Prohibited acts include those that cause physical pain but also acts that cause mental suffering to the victim, including rape.

HMG is responsible not only for the direct acts and omissions of its own agents but also for any failure to take effective measures to prevent torture from occurring by non-state actors, including CPN/M, failure to investigate allegations or failure to prosecute such perpetrators. HMG shall capture alleged CPN/M perpetrators of torture or prohibited treatment and try them in accordance with law (see fair trial below).
a) HMG shall ensure that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This shall include compliance with the international Standard Minimum Rules for the Treatment of Prisoners and the provision of adequate nutrition, drinking water, fresh air, exercise, space, accommodation, heating, clothing, medical attention when needed or requested, as well as hygiene to safeguard human dignity as well as physical and mental health.\textsuperscript{vii}

b) HMG shall ensure that accused persons are, save in exceptional circumstances, segregated from convicted persons and should be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons should be separated from adults and brought as speedily as possible for adjudication. Juvenile offenders should be segregated from adults and be accorded treatment appropriate to their age and legal status.

c) HMG shall ensure that qualified inspectors including from the investigation body, including medical personnel, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

It would not be sufficient for HMG to prohibit torture as required under international law or to make it a crime. As an example, NHRC has found a trend of involuntary or forced disappearances, each an act of torture. HMG shall immediately review current arrangements which have proved to be inadequate for the prevention of these violations, and inform NHRC of the steps taken:

a) To ensure effective, prompt, independent and transparent investigations into allegations of torture and cruel, inhuman and degrading treatment or punishment; the steps taken to ensure the criminal law effectively implements Nepal’s international legal obligations by penalising internationally-defined torture (and cruel, inhuman and degrading treatment or punishment)
specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons.

HMG must ensure that those who violate this human right, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, will be prosecuted for their crime. Consequently, those who have refused to obey orders which would violate human rights must not be punished or subjected to any adverse treatment.

b) To ensure that the right to lodge complaints against maltreatment is effective. HMG shall ensure that complaints are investigated promptly and impartially by the investigation body (see below) so as to make the remedy effective.

c) To ensure that these standards are integrated into the instruction and training given to military and law enforcement personnel, medical personnel, and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment; and to ensure that the prohibition of torture or maltreatment forms an integral part of the operational rules and ethical standards to be followed by all such persons;

d) To ensure that these minimum standards are met in the interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment as part of its obligation to prevent torture and ill-treatment;

e) To ensure that provisions are made for the effective protection of detained persons, by having detainees held only in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. HMG shall also inform NHRC of the steps taken to
ensure that the time and place of all interrogations is recorded, together with the names of all those present and that this information is available for purposes of judicial or administrative proceedings (see also recommendations above regarding the right to liberty);

f) To ensure that any places of detention are free from any equipment liable to be used for inflicting torture or ill-treatment; and

g) To ensure prompt and regular access is given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

7. **Effective investigation and prosecution for these crimes (torture; forced disappearance; executions; excessive use of force)**

HMG is obliged to ensure thorough, prompt and impartial investigation of all suspected cases of human rights violations particularly those outlined in recommendations 4 to 6 inclusive. This refers to the crimes of torture (including rape), disappearances as well as executions, including cases where complaints by relatives, NHRC, or other reliable reports suggest unnatural death as well as excessive use of force by law enforcement officials.

HMG is responsible not only for the direct acts and omissions of its own agents but also for failure to take effective measures to prevent these acts from occurring by non-state actors, including CPN/M (see minimum steps addressed to CPN/M below), failure to investigate allegations or failure to prosecute such perpetrators. HMG shall capture alleged CPN/M perpetrators of these crimes and try them in accordance with law and the minimum international standards of fair trial.

NHRC has found that current state procedures for investigating such allegations are inadequate due to their lack of specialised expertise, powers and independence. For this reason as well as the importance of the matter, the high degree of public concern, the indications of a trend of abuse by state authorities, and legitimate complaints from the families of victims about inadequacies, NHRC recommends as follows. HMG shall
ensure that outstanding and future investigations of alleged violations covered in these recommendations by a state agent (direct or indirect), shall be **pursued through an investigation that meets international minimum standards whether through the civilian courts, the NHRC or other independent mechanism.** HMG shall ensure that the **investigation body** meets the following standards, ensuring clear powers, effective resources and capacity for the task.

a) Members of investigation body shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The **investigation body** shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under international minimum standards.

b) Where applicable, the purpose of the investigation shall be to determine (where applicable) the cause, manner and time of death, the person responsible, and any trend or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

c) HMG shall ensure that the **investigation body** shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

d) The body of the deceased person (where applicable) shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be
carefully exhumed and studied according to systematic anthropological techniques.

e) The body of the deceased (where applicable) shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

f) In order to ensure objective results, those conducting an autopsy (where applicable) must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

g) Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in the human rights violations outlined in recommendations 4, 5 and 6 shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as over those conducting investigations.

h) Families of the victim and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased (where applicable) shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

i) A written report shall be made within a reasonable period of time on the methods and findings of the investigation body. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as
well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. HMG shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

j) **Legal proceedings:** HMG shall ensure that persons identified by the investigation body as having participated in executions in any territory under their jurisdiction are brought to justice. HMG shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

k) HMG shall ensure that an order from a superior officer or a public authority may not be invoked as a justification for any of the human rights violations outlined in recommendations 4, 5 and 6. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts.

l) NHRC emphasises that amnesties are incompatible with the duty of HMG to investigate acts of torture or maltreatment; to guarantee freedom from such acts; and to ensure that they do not occur in the future. HMG may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

HMG shall ensure that in no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in executions.

HMG shall ensure that acts constituting enforced disappearance are a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified. Any statute of limitations relating to acts of enforced disappearance shall be
substantial and commensurate with the extreme seriousness of the offence.

NHRC furthermore recalls that crimes against humanity are particularly grave violations of human rights committed on a large scale, whether in peace or conflict. Acts such as torture and other inhuman treatment, when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack, may constitute crimes against humanity. These crimes are also international crimes open to universal jurisdiction.

m) HMG shall ensure that the families and dependents of victims of the human rights violations in the previous paragraphs receive fair and adequate compensation within a reasonable period of time.

n) HMG shall cooperate fully in international investigations on the subject.

8. **Right to fair trial**

All persons should be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. NHRC emphasises here some key aspects of the right to fair trial based on its findings.

HMG shall ensure that any judgement rendered in a criminal case or in a suit at law shall be made public. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone should be entitled to the following minimum guarantees, in full equality:

a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

c) To be tried without undue delay;

d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he
does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

g) Not to be compelled to testify against himself or to confess guilt.

In the case of juvenile persons, the procedure should be such as will take account of their age and the desirability of promoting their rehabilitation.

Everyone convicted of a crime should have the right to his conviction and sentence being reviewed by a higher court according to law.

NHRC emphasises that an act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of military or law enforcement officials as well as that of judges, prosecutors and lawyers. HMG shall ensure that the law is fully enforced with respect to any such official who commits an act of corruption.

HMG shall ensure that the definition of corruption encompasses an attempt, commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been attempted, committed or omitted.

9. Freedom of Movement and humanitarian relief

HMG shall ensure that everyone lawfully within the territory of Nepal has the right to liberty of movement and freedom to choose his/her residence.

NHRC findings indicate that whole communities are arbitrarily labelled enemy ‘sympathizers’, by state agents with the allocation or withholding of essential humanitarian aid being used as an instrument of unlawful collective punishment. HMG should immediately take such steps as are necessary:
a) To ensure that the victims of the conflict who have suffered from the actions of either party to the conflict are recognized according to objective need.

b) To ensure that in the course of relief distribution, priority is given to the most vulnerable, including those displaced, the families of the deceased, the wounded, dependent children, the elderly, widows as well as to reconstruction of destroyed private houses and other property.

c) To ensure free movement of, and unhindered access to, humanitarian aid agencies in all parts of the country with priority given to distribution of food, medical care and the provision of essential services to the populations most in need.

10. *Protection of the Internally Displaced*

HMG shall reaffirm their commitment to respect the human rights of those who are internally displaced, as codified in the UN Guiding Principles on Internal Displacement. HMG shall ensure, in particular that:

a) Displaced persons and returnees are provided with the identity documents required by law and are guaranteed freedom of movement; and

b) Those displaced have an effective right to return to their original residence wherever possible, or to an adequate place of their own choosing in the vicinity of their former home or elsewhere within the country.

11. *Freedom of expression, assembly, association*

NHRC has found grave allegations of summary, arbitrary or extra-judicial killings of journalists, allegations of death threats made against them and of forcible disappearances. HMG shall therefore reaffirm that everyone has the right to hold opinions without interference and take the necessary steps to ensure the effective enjoyment of this right, including the necessary steps for the protection of journalists. Everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either
orally, in writing or in print, in the form of art, or through any other media of his choice.

The right of peaceful assembly shall be recognized. Everyone should have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

HMG shall ensure that policing of assemblies complies with the minimum standards regarding use of force by law enforcement officials (see right to life above).

12. Freedom of religion

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

13. Civil society and human rights defenders

While NHRC emphasizes that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lies with the State, it is also the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.

In view of NHRC’s findings regarding threats and intimidation, HMG should reaffirm the importance of human rights and humanitarian non-Governmental organizations and other non-Governmental organizations and shall ensure their free movement throughout Nepal. HMG should reaffirm its commitment to respect, and ensure respect for all human rights defenders, as set out in the UN Declaration on Human Rights Defenders.\(^x\)

14. Protection of the human rights of women

HMG shall fully respect the human rights of women (see also non-discrimination below). NHRC emphasizes the importance of bringing
gender perspectives to the centre of attention in peace making as well as in rehabilitation and reconstruction efforts. Specifically, HMG shall undertake to:

a) Adopt a gender perspective in negotiation and implementation of peace agreements, including attention to the human rights of women and girls and to support local and national women's peace initiatives;

b) Increase representation of women in decision-making for the prevention, management and resolution of conflict and peace processes;

c) Increase the appointment of women as special representatives and envoys;

d) Adopt special measures to protect women and girls from gender-based violence;

e) End impunity and prosecute those responsible for crimes, including those related to sexual and other violence against women and girls;

f) Ensure respect for the civilian and humanitarian character of camps for internally displaced persons or refugees as well as their settlements and take into account the particular needs of women and girls;

g) Consider the different needs of female and male ex-combatants and the needs of their dependents in disarmament, demobilization and rehabilitation (DDR) initiatives;

h) Ensure the active participation of women to help implement these commitments including through consultation with local and international women’s groups.
15. **Protection of the human rights of children**

HMG shall ensure that children shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his/her family, society and the State.

HMG should immediately take such steps as are necessary to ensure that the schools are treated as a peace zone and no non-school related activities should be conducted within school land or buildings.

16. **The right to participate**

HMG shall ensure that every citizen should have the right and the opportunity, without prohibited discrimination:

a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

b) To vote and to be elected at genuine periodic elections which should be by universal and equal suffrage and should be held by secret ballot, guaranteeing the free expression of the will of the electors; and

c) To have access, on general terms of equality, to public service in Nepal.

### III. MONITORING COMPLIANCE WITH HUMAN RIGHTS

17. **Monitoring compliance with minimum standards**

These immediate minimum steps, as well as the full spectrum of Nepal’s human rights obligations, are monitored by the independent and autonomous Statutory body, the National Human Rights Commission (NHRC), as part of its mandate, duties, powers and functions. That mandate includes acts committed or situations existing as from the date of its establishment and it has Statutory authority to carry out such activities, as it may deem necessary and appropriate for the enforcement, promotion and protection of human rights.
HMG shall:

a) Co-operate in full and timely fashion with NHRC in carrying out its Statutory functions. This is without prejudice to its existing mandate regarding the full spectrum of human rights (see also Powers below);

b) Ensure, in accordance with the Paris Principles internationally agreed minimum standards, that NHRC has the necessary resources to carry out its functions effectively. In accordance with its Statutory mandate, NHRC shall continue to avail itself of the services of experts or specialized agencies and HMG shall encourage national and international organizations to co-operate with the NHRC and strengthen its capacity to carry out its important role.

c) Comply with recommendations of NHRC as an integral part of its commitments under national and international law.

18. Co-operation with NHRC mandate

HMG reaffirms its co-operation with the exercise of the general ambit of NHRC powers, including the fact that NHRC may:

a) Receive communications from any individual, group of individuals or body in Nepal or elsewhere, containing reports of human rights violations. NHRC may choose to investigate any allegation, with or without a formal complaint, or on its own initiative. Where there may be a basis for criminal prosecution, allegations considered by the NHRC are passed, as appropriate, to the relevant national legal structures. NHRC may also monitor the effectiveness of investigations carried out by other national bodies or institutions. The findings of an NHRC investigation are made available to persons concerned, unless doing so would jeopardize an ongoing investigation or the safety and security of the alleged victim or others;

b) Visit any place, institution or establishment freely and without prior notice;

c) Hold its meetings, including public hearings, freely anywhere in the national territory;
d) Interview freely and privately any individual, group of individuals, officials or members of bodies or institutions;

e) Collect by any means it deems appropriate such information as it considers relevant;

f) Compel attendance of witnesses and production of relevant documents or other material;

g) Make recommendations to the HMG on the basis of any conclusions it has reached with respect to cases or situations it may have considered;

h) Offer its support to any body or institution in Nepal in order to help improve the protection of human rights and increase respect for the rule of law;

i) Consult any individual, group of individuals, officials or members of bodies or institutions;

j) Plan and carry out educational and information campaign on human rights and the functions of NHRC itself;

k) Use the media to the extent useful for the fulfilment of its mandate;

l) Report periodically through public reports; and

m) Expand its staff or other representatives, and extend its offices as it deems necessary.

19.  **Pledge of support**

HMG re-affirms its full support to NHRC. To that end it pledges:

a) To grant NHRC whatever facilities it may require for the performance of its functions; and to ensure that NHRC is not hindered in the performance of its functions.

b) To provide, as expeditiously as possible, whatever information may be required by NHRC in fulfilment of its Statutory duties;
c) To ensure that anyone who deliberately provides false or misleading information to the NHRC should be subjected to legal action and appropriately punished;

d) To ensure the security of the staff or other representatives of NHRC and of such persons as may have provided it with information, testimony or evidence of any kind; to ensure that any ill-treatment, intimidation, threat or reprisal or any other form of interference with the work of NHRC is subjected to legal action and appropriately punished;

e) To ensure an effective system of witness protection is introduced by law, with adequate resources to render it effective;

f) To ensure that public officials shall report violations within their management structure and report alleged human rights violations to NHRC where no other remedies are available or effective. Public officials shall not suffer administrative or other penalties because they have reported that an alleged human rights has occurred or is about to occur.

g) To ensure free movement throughout the country for NHRC representatives without prior notice, including to all places suspected of being places of detention;

h) To ensure the integrity and inviolability of NHRC offices, premises and vehicles and materials of any kind; to respect and ensure respect for any confidential NHRC communications (whether oral or in writing);

i) To give their earliest consideration to any recommendations made to them by NHRC;

j) To ensure that state media provides access to the NHRC; the HMG should urge private communication media to also cooperate with these efforts; and

k) To immediately ensure that all decision-making levels in the armed or security forces are aware of these reaffirmed undertakings and their implications for their behaviour to ensure compliance with human rights, as well as to ensure co-operation with the staff or other representatives of NHRC.
APPENDIX 6

His Majesty's Government's Commitment on the Implementation of Human Rights and International Humanitarian Law

Recalling the provision of the Constitution of the Kingdom of Nepal 1990 on the desires and aspirations of the Nepalese people for the creation of a society that promotes fraternity and unity among the Nepalese people based on freedom, equality and safeguards the fundamental human rights of every Nepalese citizen,

Reaffirming the priority of His Majesty’s Government for the fulfilment of its obligations and responsibilities in accordance with the Constitution and international human rights and humanitarian law,

His Majesty's Government affirms its commitments as follows:

1. His Majesty's Government will guarantee human rights protection without any prejudice on the basis of race, colour, gender, ethnicity, language, religion, political or other ideologies, social origin, disability, property, birth or on any other grounds.

2. Every person shall have the right to life, dignity and security. Right to life shall be respected under all circumstances. For this purpose, immediate instructions shall be issued to implement and respect the provisions of the Geneva Conventions in particular Common Article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities.

3. No one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances.

4. A detainee shall be informed of the reason for the arrest. No one shall be arrested during the night except in accordance with the prevailing laws. Information about the whereabouts of the detainee and his/her transfer shall be made available to the members of his/her family, legal practitioner and the person eligible to receive such information. Every place of detention will maintain a registry
containing the name of every person detained and the dates of entry, discharge or transfer.

5. Right to unhindered legal defence shall be honoured and protected. The detainee shall be allowed to speak with the family, legal practitioner and any other person within prescribed legal provisions. The accused shall have the right to present himself/herself during the hearing of the case. He/she shall have the right to defend himself/herself, or by the legal practitioner of his or her own choosing. He/she shall have the right to seek counsel from such practitioner openly or in secret.

6. Any detained person shall be held in an officially recognized place of detention. Detained persons shall be kept in humane conditions and be provided with adequate food, drinking water, appropriate shelter, clothing, health and sanitation facilities and security.

7. The accused shall have the right to be tried in the court that has all the attributes for conducting free and fair proceedings within a reasonable period of time.

8. The accused held in detention shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Any person so treated shall be provided with the compensation stipulated by the law and any person responsible for such treatment shall be punished and prosecuted according to the law.

9. While releasing from detention, the dignity and rights of the person shall be guaranteed providing credible evidence of the release from detention.

10. For the effective judicial remedy, the injunction issued by the Court, including the writ of habeas corpus shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such rights to remedy shall be punishable by law.

11. No person shall be prosecuted and punished more than once for the same offence. For the dispensation of justice, only the competent court complying with all judicial proceedings shall have the right to pronounce the verdict.

12. Every person shall have the right to freedom of movement and the choice of domicile. The right of the displaced persons to return to their homes shall be guaranteed. The right to return to their domicile or to the places of their choice shall be ensured.
13. The arrangement relating to the supply of human necessities of all types including food and medicines shall be ensured throughout the Kingdom.

14. Recognizing educational institutions as the “Zone of Peace”, no activities shall be allowed within such premises that disrupt education or peace.

15. Every person shall have the right to freedom of opinion, expression and religion. Such rights shall also include right to faith in the religion of one's choice or belief through worshipping, observance and preaching. Every person shall have the right to express opinion without hindrance in accordance with the prevailing laws. Every person shall have the freedom of expression and such rights shall include right to seek, receive and impart all kinds of information and dissemination.

16. Every person shall have the right to form associations with others in accordance with the law. Right to peaceful assembly without arms shall be unhindered. Every citizen shall have the right to participate in the public activities by himself/herself or by the independently elected representative.

17. Women and children shall enjoy the rights of special protection. His Majesty’s Government shall fully protect the rights of women and children and respect international laws such as the Convention on the Rights of the Child and the Convention Eliminating All Forms of Discrimination against Women. The mechanism to examine ways to end such discrimination shall be strengthened.

18. Human rights groups, other non-Government organizations and human rights activists working for the implementation of the principles of human rights and international humanitarian laws shall be protected.

19. Additional training to the security agencies on human rights and international humanitarian laws will be continued.

20. Any anti-terrorist legislation will be in line with established international human rights norms in the context of the fight against terrorism.

21. HMG will establish an appropriate mechanism for dealing with past violations of human rights and international humanitarian laws and to review the necessary measures.

22. His Majesty’s Government assures full cooperation to establish the fate and whereabouts of reported missing persons. HMG will
continue to provide cooperation to the International Committee of the Red Cross (ICRC) in Nepal including the access to places of detention.

23. An independent Human Rights Protection Committee shall be constituted to facilitate human rights monitoring and investigations undertaken by the NHRC, to ensure cooperation with, and protection of Governmental and non-Governmental entities for their human rights related work, and to help implement the recommendations of the NHRC. This committee will oversee the functioning of relevant Government authorities in the following aspects:

a. Investigation into human rights violations and prosecution of those responsible;
b. Observance of laws applicable to detention;
c. Protection of human rights of all persons coming into contact with the security forces;
d. Immediate release of those subjected to arbitrary or illegal detention;
e. Immediate implementation of the orders and decisions of the judiciary;
f. Taking necessary legal action against those responsible for human rights violations;
g. Recommend compensation for the victims.

24. His Majesty’s Government will provide necessary facilitation to the National Human Rights Commission in the discharge of the following activities:

a. Investigating on violations and discouragement of human rights on the basis of complaints and through its own or any other sources, and carrying out such investigations through its own mechanism or through any agency of HMG or any other official or persons;
b. Investigating on neglect of any person or institution for preventing violations of human rights, and informing or warning any agency with regard to the legal provisions on human rights;
c. Visiting, observing and inspecting any agency under HMG/N or prison or any other institutions, and recommending to HMG
any measures required for improvement in the physical or other facilities at prisons for preservation of human rights;

d. Suggesting necessary measures for review and implementation of constitutional and legal provisions for effective implementation of human rights;

e. Suggesting measures to HMG for effective implementation of international instruments on human rights to which Nepal is a party, including suggestions for reports to be submitted in accordance with these instruments;

f. Conducting research on human rights related subjects, disseminating and conducting education on human rights promotion, and encouraging non-Governmental organizations working in the human rights related fields;

g. Reviewing the current human rights situation in the country;

h. Setting up its monitoring body to determine whether the human rights commitments are being respected and to verify any violations, in particular attention to the right to life, integrity and security of the person, to individual liberty, to due process, to freedom of expression, movement of association and to the situation of the most vulnerable groups of society, including children, internally displaced persons (IDPs) and any groups subject to discrimination;

i. Strengthening of its capacity at the central level and to increase its outreach at the regional and district levels;

j. Ensuring free movement of the staff and its representatives of the Commission throughout the country and to interview any person or group freely and privately, particularly in places of detention and establishments suspected of being used for detention purposes;

k. Ensuring the security of the staff of the NHRC, its representatives and any persons who provide information to it or furnish evidence of any kind;

l. Responding promptly to any requests for information or suggestions for measure to improve the protection of human rights;

m. Passing, if appropriate, the cases considered by the NHRC to relevant national legal structures when there is basis of criminal investigation and prosecution;
n. Facilitating necessary external assistance to the Commission including assistance from the United Nations among others, to develop its institutional capacity and human resource development to carry out its mandate including monitoring and investigations in an independent, impartial and credible fashion.

25. HMG/N will adopt the necessary measures for the prevention of violations of the rights and guarantees contained in this document and to hold accountable those responsible for any such violations.

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APPENDIX 7

NHRC’s Practical Advice to His Majesty's Government For Urgent Implementation of its Reaffirmation of Human Rights and International Humanitarian Law Obligations

27 May 2004

The National Human Rights Commission (NHRC) provided advice on the minimum immediate steps to protect human rights to His Majesty's Government (HMG) on 10 March, and HMG reaffirmed some of its obligations on 26 March 2004. To facilitate the urgent implementation of the Governments reaffirmation, the NHRC here sets out herewith its recommendations besides each of HMG’s re-stated commitments.

Nothing in the HMG re-statement of its commitment to some international legal obligations shall be interpreted as the basis to amend or undermine those obligations on the state of Nepal. All Nepalese legislation must be amended where necessary to comply with Nepal’s international obligations. Human rights violations can never be excused or justified on the basis that the acts were lawful under Nepalese law.

The NHRC recalls that individual criminal responsibility may be incurred where certain crimes are committed by those acting for either the State or the CPN-M. Such acts include torture (such as rape), executions, forced displacement, use of humanitarian supplies as a weapon of war, collective punishments, and kidnapping or indiscriminate attacks. Customary international law, and the Convention against Torture to which Nepal is a party, recognizes the heinous nature of such acts in certain circumstances as international crimes, which and perpetrators of such crimes may be tried before the courts of a state applying universal jurisdiction. *Criminal responsibility may also be incurred by those in political or military command who tolerate or acquiesce in such acts or who should have prevented them.* The NHRC and others have explicitly drawn the attention of the parties to the behaviour of their subordinates. They must now demonstrate by their actions that they do not tolerate such acts, and ensure that any recurrence is prevented. The NHRC therefore urges each individual in a position to influence the conduct of their subordinates to reflect on their responsibility, and on how they would account for their action or inaction before a court of law – as well as before their family and community.
The shaded text in boxes below is the re-stated HMG commitment to human rights. The commitment will be seen as proven once it is implemented. To that end, HMG is invited to inform NHRC on its implementation of its commitment to international obligations reaffirmed on 26 March 2004 within 15 days.

1. His Majesty's Government will guarantee human rights protection without any prejudice on the basis of race, colour, gender, ethnicity, language, religion, political or other ideologies, social origin, disability, property, birth or on any other grounds.

2. Every person shall have the right to life, dignity and security. Right to life shall be respected under all circumstances. For this purpose, immediate instructions shall be issued to implement and respect the provisions of the Geneva Conventions in particular Common Article 3 which provides for the protection of people who have laid down their arms, who are sick, wounded or detained, or who have abandoned or are not actively engaged in the armed activities.

To implement the re-stated Commitment No. 1 and 2, HMG shall immediately take the following steps:

Every human being has the inherent right to life. Given that the death penalty has been abolished in law, HMG shall ensure that no executions of any kind are carried out. HMG shall ensure this right is protected in all contexts, including internal armed conflict, excessive or illegal use of force by a public official, or regarding deaths occurring in custody.

A. For protection against execution:

g) Prevention: HMG shall immediately ensure that:
   i. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty;
   ii. The use of force and firearms by law enforcement officials should commensurate with due respect for human rights; and; and
iii. The law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

h) HMG shall ensure that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
   i. Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
   ii. Minimize damage and injury, and respect and preserve human life;
   iii. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
   iv. Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; and
   v. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors in order that the independent investigation body (refer NHRC recommendation below for Point 25) required is promptly initiated.

i) HMG shall ensure not only that all executions are prohibited by law, but also that they are punishable by appropriate penalties that take into account the seriousness of such offences.

j) HMG shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody or imprisonment, as well as those officials authorized by law to use force and firearms. This has particular relevance for any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

k) HMG shall ensure the prohibition of orders (from superior officers or public authorities) authorizing or inciting other persons to carry out executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize this.

l) HMG shall ensure that effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of execution, including those who receive death threats (see also the recommendation below for witness under Point 25).
B. For protection from excessive use of force:

o) **Reporting and review procedures:** HMG shall ensure that:
   i. Effective, transparent, independent and timely reporting and review procedures are established for alleged arbitrary or abusive use of force and firearms by law enforcement officials.
   ii. The *independent investigation body* (refer NHRC recommendation below for Point 25) and administrative or prosecutorial authorities are in a position to exercise jurisdiction to ensure that such acts are promptly prosecuted and punished as a criminal offence under Nepali law;

p) HMG shall ensure that, in cases of death and serious injury or other grave consequences, a detailed report is sent promptly to the *independent investigation body* (refer NHRC recommendation below for Point 25) and to competent authorities responsible for administrative review and judicial control.

q) HMG shall ensure that persons affected by the use of force and firearms or their legal representatives shall have access to an independent investigation and judicial process. In the event of the death of such persons, this provision shall apply to their dependants.

r) HMG shall ensure that:
   i. Superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent or report such use.
   ii. No criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with these minimum standards, refuse to carry out an order to use force and firearms or who report such use by other officials.
   iii. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported an alleged violation of human rights to NHRC or to other lawful authority.
iv. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

e) **Regulations and rules of engagement:** HMG shall adopt, publish and implement regulations and rules of engagement on the use of force and firearms by law enforcement officials which reflect the standards set out here, and keep these constantly under review in co-operation with NHRC\textsuperscript{xii};

f) **Means and equipment:** HMG shall ensure:

i. A range of means as broad as possible and equipment for law enforcement officials with various types of weapons and ammunition that allows for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

ii. Law enforcement officials are equipped with self-defensive equipment such as shields, helmets, bulletproof vests and bulletproof means of transportation, in order to decrease the need to use weapons of any kind.

g) HMG shall carefully evaluate, in co-operation with NHRC, the development and deployment of non-lethal incapacitating weapons in order to minimize the risk of endangering uninvolved persons, and carefully control the use of such weapons;

h) **Qualifications, training and counselling:** HMG shall ensure that:

i. All law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.
ii. All law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use. This includes any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

iii. Law enforcement agencies review their training programmes and operational procedures. In particular, HMG shall ensure that law enforcement agencies, in providing training, fully integrate issues of police ethics and human rights in the content and method used, especially in training regarding the investigative process, including alternatives to the use of force and firearms, the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.

iv. Counselling is made compulsory for law enforcement officials who are involved in situations where force and firearms are used; as well as adequate provisions for home leave.

3. No one shall be subjected to arbitrary arrest or detention. Measures will be undertaken to prevent illegal or arbitrary detention and forced disappearances.

4. A detainee shall be informed of the reason for the arrest. No one shall be arrested during the night except in accordance with the prevailing laws. Information about the whereabouts of the detainee and his/her transfer shall be made available to the members of his/her family, legal practitioner and the person eligible to receive such information. Every place of detention will maintain a registry containing the name of every person detained and the dates of entry, discharge or transfer.

5. Right to unhindered legal defence shall be honoured and protected. The detainee shall be allowed to speak with the family, legal practitioner and any other person within prescribed legal provisions. The accused shall have the right to present himself/herself during the hearing of the case. He/she shall have the right to defend himself/herself, or by the legal practitioner of his or her own choosing. He/she shall have the right to seek counsel from such practitioner openly or in secret.
6. Any detained person shall be held in an officially recognized place of detention. Detained persons shall be kept in humane conditions and be provided with adequate food, drinking water, appropriate shelter, clothing, health and sanitation facilities and security.

9. While releasing from detention, the dignity and rights of the person shall be guaranteed providing credible evidence of the release from detention.

10. For the effective judicial remedy, the injunction issued by the Court, including the writ of habeas corpus shall be honoured. The right to verify the status of the detainee, his/her health condition, and the right to identify the authorizing and arresting authorities shall be guaranteed. Any malicious exercise against such rights to remedy shall be punishable by law.

To implement the re-stated Commitments No. 3, 4, 5, 6, 9 and 10, HMG shall immediately take the following steps:

HMG should take immediate effective steps, whether legislative, administrative, judicial or other, to prevent and terminate acts of enforced disappearance in Nepal. Only this will demonstrate that HMG does not permit or tolerate enforced disappearances. Specifically,

a) **Arrest:**

HMG shall ensure that:

i. Anyone who is arrested is informed, at the time of arrest, of the reasons for his arrest.

ii. Promptly informed of any charges against him.

iii. An arrest may be made only if ordered by the competent authority in accordance with the law.

iv. The arrest must be carried out by officers who are properly identified as such.

v. No one should be placed under arrest as a means of intimidation.

vi. In particular, arrests should not be made at night, except in the case of individuals caught ‘red-handed’.

b) **Detention:**

HMG shall ensure that:

i. No one in custody should be held incommunicado or in secret detention.
ii. Any person deprived of liberty should be held in an officially recognized place of detention. This means no one will be detained in army camp or any other location that is not recognized officially.

iii. Anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and should be entitled to trial within a reasonable time or to release.

iv. Accurate information on the detention of such persons and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

v. It should not be the general rule that persons awaiting trial should be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

c) Communication:

HMG shall ensure that:

i. Any person who has been arrested should have the right to be assisted without delay by legal counsel of his own choosing and the right to communicate freely and privately with such counsel.

ii. Anyone who is deprived of his liberty by arrest or detention should be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

iii. HMG immediately takes such steps as are necessary to guarantee the effective enjoyment of the right to habeas corpus, to determine the whereabouts or the state of health of persons deprived of their liberty and to identify the agents who ordered or carried out the deprivation of liberty.

iv. HMG shall ensure that impediment of these remedies is a punishable offence under law, and that anyone who
provides false information to the NHRC shall be subject to legal proceedings and punished.

d) **Responsibility:**

HMG shall:

i. Ensure the broadest possible publicity is given to these steps recommended by NHRC among the public at large and, in particular, among authorities or officers in charge of detention centres.

ii. Issue firm directives to the army, armed police, police force and others to provide unhindered access at any time to the NHRC and other competent authorities to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

e) HMG shall ensure that all acts of enforced disappearance are treated as an offence under criminal law punishable by appropriate penalties, which take into account their extreme seriousness. Mitigating circumstances may be established in legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

f) HMG shall ensure that:

i. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance.

ii. Any person receiving such an order or instruction has the right and duty not to obey it.

iii. Orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

iv. Training of law enforcement officials should emphasize these provisions.
g) HMG shall ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment (as well as for officials authorized by law to use force and firearms). This has particular relevance for any groups such as any “Rural Volunteer Security Groups and Peace Committees”.

h) **On Information on detention:** HMG shall ensure that:

   i. An official up-to-date register, including proper reports of medical check-up conducted at the time of detention, transfer and release of the person, is kept of all persons deprived of their liberty in every place of detention. The register shall contain:

      1. The detainee’s name and identity and the reasons for the deprivation of liberty;
      2. The name and identity of the person who ordered the arrest;
      3. The date and time of the detainee’s arrest and removal from the detention centre;
      4. The date and time of the detainee’s appearance before a judicial authority;
      5. The date, time and circumstances of the detainee’s release or transfer to another place of detention

      Additionally, HMG shall ensure that centralized registers are maintained.

   ii. The information contained in these registers should be made available to the NHRC, to the persons mentioned in the preceding paragraph to any judicial or other competent and independent national authority or anyone entitled under any international legal instrument to which Nepal is a party, seeking to trace the whereabouts of a detained person.

   i) HMG shall ensure that all persons deprived of liberty are immediately released in a manner permitting reliable verification that they have actually been released and, further,
have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

j) HMG shall ensure that:

i. Clear rules are established by law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

ii. Persons alleged to have committed any of the acts referred to in section is suspended from any official duties during the investigation. They should be tried only by the competent civilian courts, in particular not in military courts. No privileges, immunities or special exemptions should be admitted in such trials.

iii. The persons presumed responsible for such acts are guaranteed fair treatment at all stages of the investigation and eventual prosecution and trial (see Commitment 8).

iv. Persons who have or are alleged to have committed offences in this section, should not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance should be taken into account.

k) HMG shall ensure that victims of acts of enforced disappearance or unlawful or arbitrary arrest or detention and their family obtain redress and have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants are also entitled to compensation.

l) HMG shall immediately take such steps as are necessary to suspend the operation of the Terrorism and Disruptive Activities (Control and Punishment) Act 2002, with a view to it being repealed. HMG shall ensure civilian authority and
control over all state armed forces in accordance with democratic principles.

7. The accused shall have the right to be tried in the court that has all the attributes for conducting free and fair proceedings within a reasonable period of time.

11. No person shall be prosecuted and punished more than once for the same offence. For the dispensation of justice, only the competent court complying with all judicial proceedings shall have the right to pronounce the verdict.

To implement the re-stated Commitment No. 7 and 11, HMG shall immediately take the following steps:

HMG shall ensure

a) All persons are treated equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone is provided with a fair and public hearing by a competent, independent and impartial tribunal established by law.

b) That any judgement rendered in a criminal case or in a suit at law shall be made public.

c) That everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

d) That in the determination of any criminal charge against him, everyone shall have right to the following minimum guarantees, in full equality:

i. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
ii. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

iii. To be tried without undue delay;

iv. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

v. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

vi. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

vii. Not to be compelled to testify against himself or to confess guilt.

e) The procedure for juvenile persons will take account of their age and the desirability of promoting their rehabilitation.

f) Everyone convicted of a crime should have the right to his conviction and sentence being reviewed by a higher court according to law.

g) Everyone that an act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of military or law enforcement officials as well as that of judges, prosecutors and lawyers. HMG shall ensure that the law is fully enforced with respect to any such official who commits an act of corruption.

h) That the definition of corruption encompasses an attempt, commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been attempted, committed or omitted.
8. The accused held in detention shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Any person so treated shall be provided with the compensation stipulated by the law and any person responsible for such treatment shall be punished and prosecuted according to the law.

To implement the re-stated Commitment No. 8, HMG shall immediately take the following steps:

a) HMG shall ensure that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment. There are no exceptions. It is the duty of HMG to afford everyone protection through legislative and other measures as may be necessary, whether the act is inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. No justification or extenuating circumstances may be invoked, including those based on an order from a superior officer or public authority. Prohibited acts include those that cause physical pain but also acts that cause mental suffering to the victim, including rape.

b) HMG is responsible not only for the direct acts and omissions of its own agents but also for any failure to take effective measures to prevent torture from occurring by non-state actors, including CPN-/M, failure to investigate allegations or failure to prosecute such perpetrators. HMG shall capture alleged CPN-/M perpetrators of torture or prohibited treatment and try them in accordance with law.

c) HMG shall ensure that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This shall include compliance with the international Standard Minimum Rules for the Treatment of Prisoners and the provision of adequate nutrition, drinking water, fresh air, exercise, space, accommodation, heating, clothing, medical attention when needed or requested, as well as hygiene to safeguard human dignity as well as physical and mental health. xiv

d) HMG shall ensure that:
i. Accused persons are, save in exceptional circumstances, segregated from convicted persons and should be subject to separate treatment appropriate to their status as not convicted persons.

ii. Accused juvenile persons are separated from adults and brought as speedily as possible for adjudication.

iii. Juvenile offenders are segregated from adults and accorded treatment appropriate to their age and legal status.

e) HMG shall ensure that qualified inspectors including inspectors from the independent investigation body, and including medical personnel, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

f) It would not be sufficient for HMG to prohibit torture as required under international law or to make it a crime. HMG shall immediately review current arrangements, which have proved to be inadequate for the prevention of these violations, and inform NHRC of the steps taken:

i. To ensure effective, prompt, independent and transparent investigations into allegations of torture and cruel, inhuman and degrading treatment or punishment;

ii. To ensure the criminal law effectively implements Nepal’s international legal obligations by penalising internationally-defined torture (and cruel, inhuman and degrading treatment or punishment) specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons.

g) HMG must ensure that those who violate this human right, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, will be prosecuted for their crime. Consequently, those who have refused to obey orders, which would violate
human rights must not be punished or subjected to any adverse treatment.

h) To ensure that the right to lodge complaints against maltreatment is effective, HMG shall ensure that complaints are investigated promptly and impartially by the independent investigation body (Refer to NHRC recommendation below for Point 25) so as to make the remedy effective.

i) To ensure that these standards are integrated into the instruction and training given to military and law enforcement personnel, medical personnel, and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment; and to ensure that the prohibition of torture or maltreatment forms an integral part of the operational rules and ethical standards to be followed by all such persons;

j) To ensure that these standards are met in the interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment as part of its obligation to prevent torture and ill-treatment;

k) To ensure that provisions are made for the effective protection of detained persons, by having detainees held only in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. HMG shall also inform NHRC of the steps taken to ensure that the time and place of all interrogations is recorded, together with the names of all those present and that this information is available for purposes of judicial or administrative proceedings.

l) To ensure that any places of detention are free from any equipment liable to be used for inflicting torture or ill-treatment; and

m) To ensure prompt and regular access is given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.
12. Every person shall have the right to freedom of movement and the choice of domicile. The right of the displaced persons to return to their homes shall be guaranteed. The right to return to their domicile or to the places of their choice shall be ensured.

13. The arrangement relating to the supply of human necessities of all types including food and medicines shall be ensured throughout the Kingdom.

To implement the re-stated Commitment No. 12 and 13, HMG shall immediately take the following steps:

a) HMG will prevent forceful eviction of people from the place or area of domicile except for their safety will not be carried out.

b) HMG should immediately take such steps as are necessary:

i. To ensure that the victims of the conflict who have suffered from the actions of either party to the conflict are recognized according to objective need.

ii. To ensure that in the course of relief distribution, priority is given to the most vulnerable, including those displaced, the families of the deceased, the wounded, dependent children, the elderly, widows as well as to reconstruction of destroyed private houses and other property.

iii. To ensure free movement of, and unhindered access to, humanitarian aid agencies in all parts of the country with priority given to distribution of food, medical care and the provision of essential services to the populations most in need.

15. Every person shall have the right to freedom of opinion, expression and religion. Such rights shall also include right to faith in the religion of one's choice or belief through worshipping, observance and preaching. Every person shall have the right to express opinion without hindrance in accordance with the prevailing laws. Every person shall have the freedom of
expression and such rights shall include right to seek, receive and impart all kinds of information and dissemination.

16. Every person shall have the right to form associations with others in accordance with the law. Right to peaceful assembly without arms shall be unhindered. Every citizen shall have the right to participate in the public activities by himself/herself or by the independently elected representative.

To implement the re-stated Commitment No. 15 and 16, HMG shall immediately take the following steps:

The HMG shall:

a. Respect that everyone has the right to hold opinions without interference and take the necessary steps to ensure the effective enjoyment of this right, including the necessary steps for the protection of journalists.

b. Respect that everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

c. Respect the right to assemble peacefully. Everyone should have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

d. Ensure that policing of assemblies complies with the minimum standards regarding use of force by law enforcement officials.

e. Ensure that every citizen should have the right and the opportunity, without prohibited discrimination:

i. To take part in the conduct of public affairs, directly or through freely chosen representatives;

ii. To vote and to be elected at genuine periodic elections which should be by universal and equal suffrage and should be held by secret ballot, guaranteeing the free expression of the will of the electors; and
iii. To have access, on general terms of equality, to public service in Nepal.

14. Recognizing educational institutions as the “Zone of Peace”, no activities shall be allowed within such premises that disrupt education or peace.

17. Women and children shall enjoy the rights of special protection. His Majesty’s Government shall fully protect the rights of women and children and respect international laws such as the Convention on the Rights of the Child and the Convention Eliminating All Forms of Discrimination against Women. The mechanism to examine ways to end such discrimination shall be strengthened.

To implement the re-stated Commitment No. 14 and 17, HMG shall immediately take the following steps:

a) HMG shall ensure that children shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

b) HMG should immediately take such steps:

i. As are necessary to ensure that the schools are treated as a peace zones and no non-school related activities should be conducted within school land or buildings.

ii. To prevent use of school premise for military operation or carry out military action in the school putting the lives of the students and teachers at grave risk.

c) HMG shall fully respect the human rights of women. Specifically, HMG shall:

i. Adopt a gender perspective in negotiation and implementation of peace agreements, including attention to
the human rights of women and girls and to support local and national women's peace initiatives;

ii. Increase representation of women in decision-making for the prevention, management and resolution of conflict and peace processes;

iii. Increase the appointment of women as special representatives and envoys;

iv. Adopt special measures to protect women and girls from gender-based violence;

v. End impunity and prosecute those responsible for crimes, including those related to sexual and other violence against women and girls;

vi. Ensure respect for the civilian and humanitarian character of camps for internally displaced persons or refugees as well as their settlements and take into account the particular needs of women and girls;

vii. Consider the different needs of female and male ex-combatants and the needs of their dependents in disarmament, demobilization and rehabilitation (DDR) initiatives;

viii. Ensure the active participation of women to help implement these commitments including through consultation with local and international women's groups.

18. Human rights groups, other non-Government organizations and human rights activists working for the implementation of the principles of human rights and international humanitarian laws shall be protected.

To implement the re-stated Commitment No. 18 HMG shall immediately take the following steps:

a) HMG shall not intimidate or issue threat to human rights and humanitarian non-Governmental organizations and other non-Governmental organizations.

b) HMG shall ensure their free movement throughout Nepal.
c) HMG shall ensure respect for all human rights defenders, as set out in the UN Declaration on Human Rights Defenders.\textsuperscript{xv}

19. Additional training to the security agencies on human rights and international humanitarian laws will be continued.

To implement the re-stated Commitment No. 19, HMG shall immediately take the following steps:

a) HMG shall ensure that all law enforcement personnel, including persons with military or civilian command responsibility, are trained in the implementation of Nepal’s human rights obligations and specifically the implementation of these recommendations.

b) HMG shall ensure that the training of such law enforcement officials emphasizes that \textit{no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance, execution, torture. Any person receiving such an order or instruction has the right and duty not to obey it. And, orders or instructions directing, authorizing or encouraging any such human rights violations are prohibited.}

c) Such training shall further emphasize that individual criminal responsibility may be incurred where certain crimes are committed. Such acts include torture (such as rape), executions, forced displacement, use of humanitarian supplies as a weapon of war, collective punishments, and kidnapping or indiscriminate attacks. Customary international law, and the Convention against Torture to which Nepal is a party, recognizes the heinous nature of such acts in certain circumstances as international crimes, which may be tried before the courts of a state applying universal jurisdiction. \textit{Criminal responsibility may also be incurred by those in political or military command who tolerate or acquiesce in such acts or who should have prevented them.}

20. Any anti-terrorist legislation will be in line with established international human rights norms in the context of the fight against terrorism.
To implement the re-stated Commitment No. 20, HMG shall immediately take the following steps:

a) HMG shall immediately take such steps as are necessary to suspend the operation of the Terrorism and Disruptive Activities (Control and Punishment) Act 2002, with a view to it being repealed. HMG shall ensure civilian authority and control over all state armed forces in accordance with democratic principles.

b) HMG shall seek NHRC’s comments in advance of a proposed legislative amendment or any proposed new legislation of such nature.

21. HMG will establish an appropriate mechanism for dealing with past violations of human rights and international humanitarian laws and to review the necessary measures.

To implement the re-stated Commitment No. 21, HMG shall immediately take the following steps:

a) HMG shall seek NHRC’s comments in the design stage of such a proposed mechanism.

b) HMG shall respond properly on the issues raised by the NHRC vide letters in the past three years. In this regard, HMG will advise NHRC of the arrangements it has made put in place within one week.

22. His Majesty’s Government assures full cooperation to establish the fate and whereabouts of reported missing persons. HMG will continue to provide cooperation to the International Committee of the Red Cross (ICRC) in Nepal including the access to places of detention.

To implement the re-stated Commitment No. 22, HMG shall immediately take the following steps:
a) HMG shall ensure that people do not go missing as a result of armed conflict and that those who do, are accounted for.

b) The NHRC notes that efforts to reunite families and trace the missing are not of themselves sufficient to meet the standard of an effective investigation required of Nepal by its international obligations. HMG has not conducted independent, effective investigations into the claims made by the relatives of missing persons that the latter had disappeared after being detained by security officials in circumstances in which there was real cause to fear for their welfare. The state continues to hold detainees incommunicado and thus effective procedures for the prevention of disappearances are still not in place. Nepal is in continuing violation of the human rights of those reported missing and their relatives.

c) HMG must:

i. Take the necessary operational measures to protect the right to life of the missing persons who are disappearing in life-threatening circumstances well known to HMG. The NHRC findings have illustrated the climate of risk and fear in which persons are reported to have gone missing or have been detained, with the real danger of torture and forced disappearance to which detainees are exposed. These operational measures are outlined above and include the obligation to keep accurate and reliable records of the persons detained and to take any other effective measures, which would serve to safeguard against the risk of disappearance. This failing cannot be excused with reference either to combat or to any confused and tense state of affairs. The absence of such information makes it impossible to allay the concerns of the relatives of the missing persons about the latter’s fate.

ii. Conduct effective, independent investigations into the fate of the missing persons (see recommendations below). This includes ensuring that searches are carried out for the dead or wounded, and that the dead are buried. There can be no limitation in time as regards the duty to investigate and inform, especially as it can not be ruled out that the missing
might have been the victims of the most serious crimes, including war crimes or crimes against humanity.

iii. Provide information enabling relatives to trace those persons who are still missing and to account for their fate. The relatives of those missing in this climate must undoubtedly suffer the most painful uncertainty and anxiety. Their continuing anguish of not knowing whether family members were killed or are still in detention or, if detained, have since died, may reach the severity of being construed as continuing inhuman treatment by the state.

d) HMG shall also:
   i. Facilitate exchange of family news, such as enquiries made by members of families dispersed as a result of the conflict so as to help them restore contact with one another and try to bring them together again.
   ii. Provide means of identification to law enforcement personnel.
   iii. Ensure proper handling of human remains to minimize the number of persons reported missing. HMG shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
   iv. Encourage the work of organizations engaged in humanitarian aspects of this task, including ICRC.
   v. Provide lists of deceased persons showing exact location and markings of graves together with particulars of the dead interred therein.
   vi. Support affected families. Families have the right to be informed of the fate of missing relatives. Families awaiting clarification are most often led by women and have material, financial, psychological, legal and administrative needs. HMG should ensure that these women have clear legal status and are facilitated in attaining relevant pensions or similar entitlements.

23. An independent Human Rights Protection Committee shall be constituted to facilitate human rights monitoring and investigations undertaken by the NHRC, to ensure cooperation with, and protection of Governmental and non-Governmental entities for their human rights related work, and to help implement the recommendations of the
NHRC. This committee will oversee the functioning of relevant Government authorities in the following aspects:

a) Investigation into human rights violations and prosecution of those responsible;
b) Observance of laws applicable to detention;
c) Protection of human rights of all persons coming into contact with the security forces;
d) Immediate release of those subjected to arbitrary or illegal detention;
e) Immediate implementation of the orders and decisions of the judiciary;
f) Taking necessary legal action against those responsible for human rights violations;
g) Recommend compensation for the victims.

25. HMG/N will adopt the necessary measures for the prevention of violations of the rights and guarantees contained in this document and to hold accountable those responsible for any such violations.

To implement the re-stated Commitment 23 & 25, HMG shall immediately take the following steps:

HMG shall ensure:

a) Effective, transparent and speedy implementation of NHRC recommendations in view of the gravity and urgency of the human rights crisis facing Nepal. It shall inform NHRC on progress in implementation of its recommendations.

b) That any person whose human rights are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

c) That any person claiming such a remedy should have his right thereto determined by a competent authority provided for by the legal system, and to develop the possibilities of judicial remedy;
d) That the competent authorities shall enforce such remedies. Specifically, HMG shall ensure that summonses and other court orders, as well as judgements, are effectively enforced.

e) That existing or new mechanisms act with the urgency which the current human rights crisis demands. Specifically, HMG is obliged to ensure thorough, prompt and impartial investigation of all suspected cases of human rights violations particularly those concerning right to life, prohibition of torture, inhuman treatment or punishment, rape, disappearances as well as executions, including cases where complaints by relatives, NHRC, or other reliable reports suggest unnatural death as well as excessive use of force by law enforcement officials.

f) HMG is responsible not only for the direct acts and omissions of its own agents but also for failure to take effective measures to prevent these acts from occurring by non-state actors, including CPN-/M, failure to investigate allegations or failure to prosecute such perpetrators. HMG shall capture alleged CPN/-M perpetrators of these crimes and try them in accordance with law and the minimum international standards of fair trial.

g) HMG shall ensure that outstanding and future investigations of alleged violations covered in these recommendations by a state agent (direct or indirect), shall be **pursued through an investigation that meets international minimum standards whether through the civilian courts, the NHRC or other independent mechanism.** HMG shall ensure that the investigation body meets the following standards, ensuring clear powers, effective resources and capacity for the task.

i. Members of investigation body shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The investigation body shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under international minimum standards.

ii. Where applicable, the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any trend or practice which may
have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

iii. HMG shall ensure that the investigation body shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

iv. The body of the deceased person (where applicable) shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to access to the place where the body was discovered, and access to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

v. The body of the deceased (where applicable) shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.
vi. In order to ensure objective results, those conducting an autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

vii. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in the human rights violations outlined for points 4, 5 and 6 shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as over those conducting investigations.

viii. Families of the victim and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased (where applicable) shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

ix. A written report shall be made within a reasonable period of time on the methods and findings of the investigation body. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. HMG shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

x. **Legal proceedings:** HMG shall ensure that persons identified by the investigation body as having participated in
executions in any territory under their jurisdiction are brought to justice. HMG shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

xi. HMG shall ensure that an order from a superior officer or a public authority may not be invoked as a justification for any of the human rights violations outlined for points 4, 5 and 6. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts.

xii. NHRC emphasizes that amnesties are incompatible with the duty of HMG to investigate acts of torture or maltreatment; to guarantee protection from such acts; and to ensure that they do not occur in the future. HMG may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

xiii. HMG shall ensure that in no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in executions.

xiv. HMG shall ensure that acts constituting enforced disappearance are a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified. Any statute of limitations relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

xv. NHRC furthermore recalls that crimes against humanity are particularly grave violations of human rights committed on a large scale, whether in peace or conflict. Acts such as torture and other inhuman treatment, when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack, may
constitute crimes against humanity. These crimes are also international crimes open to universal jurisdiction.

xvi. HMG shall ensure that the families and dependents of victims of the human rights violations in the previous paragraphs receive fair and adequate compensation within a reasonable period of time.

xvii. HMG shall cooperate fully in international investigations on the subject.

24. His Majesty’s Government will provide necessary facilitation to the National Human Rights Commission in the discharge of the following activities:

a) Investigating on violations and discouragement of human rights on the basis of complaints and through its own or any other sources, and carrying out such investigations through its own mechanism or through any agency of HMG or any other official or persons;

b) Investigating on neglect of any person or institution for preventing violations of human rights, and informing or warning any agency with regard to the legal provisions on human rights;

c) Visiting, observing and inspecting any agency under HMG/N or prison or any other institutions, and recommending to HMG any measures required for improvement in the physical or other facilities at prisons for preservation of human rights;

d) Suggesting necessary measures for review and implementation of constitutional and legal provisions for effective implementation of human rights;

e) Suggesting measures to HMG for effective implementation of international instruments on human rights to which Nepal is a party, including suggestions for reports to be submitted in accordance with these instruments;

f) Conducting research on human rights related subjects, disseminating and conducting education on human rights promotion, and encouraging non-Governmental organizations working in the human rights related fields;

g) Reviewing the current human rights situation in the country;
h) Setting up its monitoring body to determine whether the human rights commitments are being respected and to verify any violations, in particular attention to the right to life, integrity and security of the person, to individual liberty, to due process, to freedom of expression, movement of association and to the situation of the most vulnerable groups of society, including children, internally displaced persons (IDPs) and any groups subject to discrimination;

i) Strengthening of its capacity at the central level and to increase its outreach at the regional and district levels;

j) Ensuring free movement of the staff and its representatives of the Commission throughout the country and to interview any person or group freely and privately, particularly in places of detention and establishments suspected of being used for detention purposes;

k) Ensuring the security of the staff of the NHRC, its representatives and any persons who provide information to it or furnish evidence of any kind;

l) Responding promptly to any requests for information or suggestions for measure to improve the protection of human rights;

m) Passing, if appropriate, the cases considered by the NHRC to relevant national legal structures when there is basis of criminal investigation and prosecution;

n) Facilitating necessary external assistance to the Commission including assistance from the United Nations among others, to develop its institutional capacity and human resource development to carry out its mandate including monitoring and investigations in an independent, impartial and credible fashion.

To implement the re-stated Commitment No. 24, HMG shall immediately take the following steps:

a) HMG shall provide regular, comprehensive and accurate up-dates to NHRC regarding the implementation of the NHRC recommendations.

b) HMG shall provide financial resources necessary for proper implementation of Strategic Plan of the NHRC within two months.
c) HMG shall assist and fully cooperate immediately with the NHRC in soliciting special assistance from UN and other donor countries and organisations. In this regard, HMG will urgently arrange for technical assistance from UNOHCHR to enable NHRC to carry out monitoring work widely and more effectively.

d) HMG shall immediately implement the request of NHRC to invite UN Rapporteurs on extra-judicial killing, disappearances and torture.

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APPENDIX 8

MINIMUM IMMEDIATE STEPS FOR CPN - (MAOIST) TO RESPECT INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS PRINCIPLES

27 May 2004

Introduction

This document has been prepared by the National Human Rights Commission (hereafter referred to as "the Commission" or "the NHRC") as a comprehensive set of recommendations to the Communist Party of Nepal - Maoist (hereafter referred to as “the CPN-M”) to respect international humanitarian law and human rights principles. It also draws on various statements of NHRC's urging the CPN-M to prevent abuses of human rights and CPN-M's statement dated 16 March 2004 reaffirming its commitment to respect Geneva Conventions as well as human rights.

The NHRC is an independent and autonomous body established according to the Human Rights Commission Act 2053 (1997). The Commission has the legal authority to carry out human rights protection and promotion works as well as other activities related to human rights. It is also an internationally recognized body as endorsed by the General Assembly in resolution 48/134 of 20 December 1993 recognizing the role of a national human rights institution for the protection and promotion of human rights. This document has therefore been prepared by the Commission on the course of fulfilling its responsibilities and obligations as a national human rights institution.

On the basis that the CPN-M should also bear responsibility on human rights issues, the Commission has repeatedly criticized the CPN-M for the human rights abuses committed by them. The Commission therefore believes that it is important to emphasize the fact that the CPN-M's governing behaviour in the armed conflict should be within the boundaries of human rights principles.

The Commission also wishes to draw attention to the fact that criminal responsibility may be incurred by those who tolerate or acquiesce to acts of human rights abuses or by those who should have prevented such abuses.
As such, even as an armed political opposition group, the CPN-M must respect the international humanitarian law as well as human rights principles. In this context, the minimum steps applicable to the CPN-M for the immediate implementation of respect for international humanitarian law and human rights principles are described below:

1. **Command Structure:**

1.1 The CPN-M must meet the requirements established by international humanitarian law and maintain a command structure that is responsible for the group's conduct and behaviour;

1.2 The CPN-M must ensure the establishment of an effective system that prevents crimes such as torture, rape, non-combat killings, hostage taking, kidnapping, extortion and attacks on non-military targets; and

1.3 As international criminal responsibility may be incurred by those in the leadership level of CPN-M who tolerate or acquiesce in such acts or who should have prevented them, the CPN-M must ensure the establishment of a system that prevents such acts.

2. **CPN-M's effective implementation of Article 3 common to the Geneva Conventions applicable in the present context:**

2.1 Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

2.2 The following acts are, and shall remain prohibited at all times:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

- Taking of hostages;
- Attacks on personal dignity, in particular humiliating and degrading treatment;
- The passing of death sentences and carrying out executions;
- Destruction or damage of public infrastructure;
- The use of human shields;
- Killings of non-combatants and retired security personnel; and
- Attacks on security personnel uninvolved in the conflict or security personnel on home leave or retired security personnel.

3. Freedom of movement and humanitarian relief

CPN-M will respect the right of liberty of movement and freedom of every individual to choose his/her residence. Entire communities have been found to be arbitrarily labelled as ‘enemy sympathizers’ by CPN-M and the allocation or withholding of essential humanitarian aid have been used as an instrument of unlawful collective punishment, which need to be prevented. As such, the CPN-M should immediately take the following necessary steps:

3.1 Ensure that the victims of the conflict who have suffered from the actions of either party to the conflict are recognized according to objective needs; and

3.2 To respect free movement of, and unhindered access to, humanitarian aid agencies in all parts of the country with priority given to distribution of food, medical care and the provision of essential services such as vaccination of children, ambulance and fire brigade to the populations most in need.

4. Protection of the human rights of women

CPN-M shall fully respect the human rights of women. Specifically, the CPN-M is recommended to:
4.1 Adopt special measures to prevent gender-based violence by its combatants;

4.2 To respect free movement of, and unhindered access to, humanitarian aid agencies in all parts of the country with priority given to distribution of food, medical care and the provision of essential services such as vaccination of children, ambulance and fire brigade to the populations most in need; and

4.3 Ensure the participation of women in negotiation and implementation of peace agreements, as well as in rehabilitation and reconstruction efforts.

5. Protection of the human rights of children

The recruitment or use of children in armed conflict is not justified under any situation and the CPN-M should accept this as mandatory. The demobilisation of children should not be made subject to conditionality by the CPN-M it and should take place immediately.

In this regard, the NHRC calls on the CPN-M to:

5.1 Ensure that they do not, under any circumstances, use in hostilities persons under the age of 18 years;

5.2 Ensure that they immediately demobilize or release into safety children already being used as soldiers;

5.3 Ensure that the schools are treated as a peace zones and no non-school related activities should be conducted within school land or buildings;

5.4 Ensure that abduction of children for any purpose must be immediately and strictly prohibited;

5.5 Assist in the process of reintegration of former child soldiers in their education, vocational training, income-generating activities and trauma counselling, taking into consideration their material, physical, psychosocial and spiritual interests; and

5.6 Make a public commitment to provide necessary assistance to civil society and organizations undertaking family reunification and full social rehabilitation activities and not hinder their activities.
6. Confiscation of property and forced donations and levy:

The CPN-M shall not confiscate the private property of people. It will also ensure that collection of forced ‘fees’, ‘charges’, ‘donations’ or ‘levy’ as well as confiscation of property by its cadre and combatants are prohibited in the future.

7. Forced recruitment:

The CPN-M shall make a public commitment that it will prevent the intimidation of the civilian population, kidnapping and hostage taking and ensure that such activities will not be undertaken by the CPN-M.

8. Information on fallen combatants

The CPN-M shall keep proper records of its fallen combatants and cadres and inform the family members of the deceased of the deaths in a very timely manner.

9. Indiscriminate use of landmines and explosive materials:

The CPN-M has indiscriminately used landmines and other kinds of explosive materials, placing them around private houses, on farms, trails and roads used by the general public, thereby causing the deaths or maiming of non-combatants. The leadership of the CPN-M must therefore ensure the prevention of such indiscriminate acts.

10. Protection of the rights of the internally displaced

The CPN-M shall respect the rights of the internally displaced, as per the UN Guiding Principles on Internal Displacement. As such, the CPN-M shall ensure that:

10.1 Freedom of movement of displaced persons and returnees are respected;

10.2 Those displaced have an effective right to return to their original residence wherever possible, or to an adequate place of their own choosing in the vicinity of their former home or elsewhere within the country; and

10.3 No fees or charges will be levied on the returnees.

11. Freedom of expression, assembly and association
The NHRC has found that the CPN-M has been involved in the execution and kidnapping of journalists, political party workers, teachers, other professionals and several unarmed civilians. In this regard, the NHRC emphasises the political and military leadership of the CPN-M bear its responsibility and respect the following:

11.1 Everyone has the right to hold opinions without interference and the CPN-M should take the necessary steps to respect the effective enjoyment of this right;

11.2 Everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

11.3 Everyone has the right to freedom of association with others.

12. Human Rights Monitoring Compliance

The Commission calls on the CPN-M to assist in the human rights monitoring work as follows:

12.1 Avoid prejudice to the Commission’s existing mandate on the full spectrum of human rights;

12.2 Provide, as expeditiously as possible, whatever information may be required by the NHRC in fulfilment of its statutory duties;

12.3 Guarantee the security of the staff or other representative of the NHRC where appropriate and of such persons who may have provided it with information, testimony or evidence of any kind and to ensure that any ill-treatment, intimidation, threat or reprisal or any other form of interference with the work of the NHRC is prevented;

12.4 Ensure the inviolability of the offices, premises, vehicles and materials of any kind belonging to the Commission and also ensure respect for any confidential communications (whether oral or in writing) belonging to the Commission.

13. Cooperation in the fulfilment of the Commission’s responsibilities:

The NHRC calls on the CPN-M to cooperate with the exercise of the NHRC powers to:
13.1 Receive communications and information on human rights violations from any individual, group of individuals or body, or carry out investigation on its own initiative. The findings of the investigations may be made public, when appropriate, or passed to the relevant national or international legal structures, when appropriate, the NHRC may also monitor the effectiveness of investigations carried out by other national bodies or institutions;

13.2 The Commission may visit and inspect any place or institution freely and without any prior permission;

13.3 The Commission may hold public hearings on the issue of human rights violations in any part of the country;

13.4 The Commission may interview freely and privately any individual, group, official, institutions or members of bodies or institutions;

13.5 The Commission may collect relevant information by any means it deems appropriate;

13.6 The Commission may compel attendance of witnesses and production of relevant documents or other material;

13.7 The Commission may use the media to the extent useful for the fulfilment of its mandate;

13.8 The Commission may make its reports public in a periodic basis; and

13.9 The Commission may expand its staff or other representatives and offices as it deems necessary.

The implementation of the minimum steps shall not affect, as per international law, the legal status of the CPN-M in the armed conflict.

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APPENDIX 9

The Nepalese Human Rights Commission’s Management Information and Reporting System: Analysis and Recommendations

31 December 2001

1. Introduction:

A Commission’s management information and reporting system (CIMRS) serves essentially four main purposes:

- It provides program managers will data on **work inputs** (the number of complaints filed) with sufficient detail to allow them to understand trends and patterns, identify frequent violations and violators, determine whether information and outreach campaigns are having effect and determine whether particular issues are problematic in particular regions and/or among particular groups.

- It provides program managers with data on **work outputs** (the number of complaints dealt with) again with sufficient detail to allow them to understand whether trends or patterns exist with respect to findings and/or remedies in relation to types of complaints or classes of violators, to access the impact and effectiveness of information and outreach campaigns, to determine the impact of the complaint handling process, etc. It also provides a measurement of the efficiency and the effectiveness of the complaint handling process.

- It provides program managers with data on **program effectiveness** (the resolution of complaints) once again with sufficient precision to determine whether the Commission’s efforts are having greater impact with reference to some violators or some perpetrators.

- It provides program managers with data on **program efficiency** (the time it takes to deal with complaints generally, and defined complaint stages in particular) to determine how well the process and the investigative staff are performing and to identify possible bottlenecks and inefficiencies. It also allows comparisons across
regions, between different personnel and between the processing time for various classes of cases or different violators.

All of these program data also allow managers to assess the need for additional program personnel and other resources, to determine the need for further training, to assess the adequacy of policies and procedures, to cost program activities and to project and plan.

2. The NHRC’s current CIMRS

The NHRC’s current CIMRS was described as follows:

- A report that provides details on the number of cases received, by category (see Appendix 1), giving the actions taken to date. While they do not do so now, the Unit anticipates providing a further breakdown by region. For this, they will use the broad geographic divisions of the country used in public administration – Eastern, Central, Western, Mid-western, and Far-western.

- A report that duplicates, by in large, the Division’s registration and case control book and provides the following data: case number; victim; summary of complaint, preliminary investigation findings and decision and final investigation findings and decisions. It is possible from a review of this report to determine the category of complaint as well as the organ named as the alleged perpetrator.

Both reports are generated manually and given to the full Commission on a monthly basis.

Other information, such as the number of cases completed in a given time period, the time it takes to come to critical decision-points or the number of cases received or dealt with involving specific organisations, is available by perusing the case registration and control book.

3. Analysis of the NHRC’s CIMRS

The existing CIMRS responds to the first data requirement (work input).

To a lesser degree it also responds to the third (program effectiveness) in that data is generated on the results of investigation. This data is not
presented, however, in a user-friendly format nor does it present all critical information. Moreover, the report prepared for this purpose largely duplicates what is already contained in the first report described above and requires significant effort and time to prepare.

There are no standing reports that provide data on work outputs or program efficiency, although such data are available on an ad hoc query basis, again produced manually.

4. Proposals for improving the NHRC’s CIMRS

The comments presented here are based on the CIMRS requirements set out in the Introduction section. However, they should be considered in two lights: what basic data is needed now and what information should be generated when an automated complaints handling system is available. In particular, with reference to the first, a balance must be struck between information needs and the cost (time needed by personnel to manually generate reports) implications of producing such information and reports.

A. Recommendation 1: Re-classification of cases

The current categorisation of complaints gives a fairly good, easily generated snapshot of the types of cases being dealt with by the Commission. At the same time, in the long run, the categorisation system risks not providing program managers with the kind of detail that would make a CIMRS fully useful. In the design of the anticipated automated complaints management system, or before if possible, the Commission should consider extending the categories. One option would be to include in the categories all the rights and guarantees set out in the Conventions ratified by Nepal. This would ensure that the Commission is aware of the precise types of cases it is receiving and dealing with. A variant of this, and it is the approach I would recommend, would be to re-design the system by grouping types of complaints according, first, to the Convention involved, and, second, by the category of right and/or guarantee involved\(^89\). This would not only ensure that the Commission can generate

\(^89\) It is not always easy to classify these rights, first because there are duplications even between the two major Conventions (see relevant footnotes) and, second, because there may be a number of ways to join similar rights set out in each Convention. The model set out here should not be seen as definitive and can and should be re-formatted as desired to take account of local realities and understandings.
precise information on cases it handles, but also assist in intake (the
allegation must fit into a category to be receivable) and in training (staff
understanding of the subject-matter jurisdiction of the Commission would
be reinforced with every complaint) Since most of the rights and
guarantees set out in more specific Conventions duplicate the rights set out
in the CESCR and the CCPR, such a categorisation might look as follows:

1. **Civil and Political Rights:**
   a. Discrimination (art. 2)\(^90\)
   b. Gender equality (art. 3)\(^91\)
   c. Physical Security
      i. Right to life (art. 6)
      ii. Torture (art. 7)\(^92\)
      iii. Cruel or inhuman treatment (art. 7)
      iv. Slavery or servitude/compulsory labour (art. 8)
   d. Legal Rights
      i. Liberty and Security of Person (art. 9)
      1. Arbitrary Arrest
      2. Right to be informed of charge\(^93\)
      3. Right to be brought before the courts
      4. Right to provisional release
      5. Right to trial
      6. Right to initiate court proceedings
      ii. Equality before the courts (art. 14)
      1. Right to fair hearing
      2. Right to public hearing
      3. Right of presumed innocence
      4. Right to counsel
      5. Right to be present at trial
      6. Right to examine witnesses
      7. Right against self-incrimination
      8. Right to appeal
      9. other
      iii. Retroactive application of justice (art. 15)
      iv. Consideration as a person before the law (art. 16)

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\(^90\) Normally, this categorisation would be followed by a second in order to specify exactly
which substantive right is being applied in a discriminatory manner.

\(^91\) Normally, this categorisation would be followed by a second in order to specify exactly
which substantive right is being applied without regard to gender equality.

\(^92\) While the Convention joins torture with cruel and inhuman treatment, I see an advantage
in distinguishing between the two.

\(^93\) This right is also guaranteed under article 14. However, since it relates closely with
arbitrary arrest I would include it here.
e. Rights of detainees (art. 10)
   i. Inhumane treatment
   ii. Rights of accused (separation and differential treatment)
   iii. Rights of juvenile offenders (separation and treatment)
   iv. Imprisonment for contractual obligations (art. 11)
   v. Other

f. Liberty of movement (art. 12)

g. Expulsion of aliens (art. 13)

h. Right to privacy (art. 17)
i. Freedom of thought, conscience and religion (art. 18)
j. Freedom of expression (art. 19)
k. Advocacy of war or hatred (art. 20)
l. Right of peaceful assembly (art. 21)
m. Freedom of association (art. 22)
n. Family rights (art. 23)
o. Children’s rights (art. 24)
p. Political rights (art. 25)
   i. Right to vote
   ii. Right to run for office
   iii. Right to work in the public sector
q. Equality before the law (art. 26)
r. Minority rights (art. 27)
s. Negligence

2. Economic, Social and Cultural Rights
   a. Discrimination (art. 2)
   b. Gender equality (art. 3)
   c. Right to work (art. 6 and 7)
      i. Freedom of choice of employment
      ii. Fair wages

---

94 This might in particular be used to classify cases based on the minimum standards and could be broken out further depending on the Commission’s experiences.

95 This is not a right set out in the Convention of course, but rather a categorisation of complaint according to the Human Rights Act of Nepal. It would appear here only if the recommendation made in the paper of the complaint process – to consider such cases as separate complaints – is accepted. Moreover, if ‘negligence’ is cited, it should be linked to the substantive right that is raised in the initial complaint. This would allow the compilation of data on types of cases where ‘negligence’ is most likely to occur.

96 Normally, this categorisation would be followed by a second in order to specify exactly which substantive right is being applied in a discriminatory manner.

97 Normally, this categorisation would be followed by a second in order to specify exactly which substantive right is being applied without regard to gender equality.
iii. Equal remuneration
iv. Safe working conditions
v. Equal opportunity
vi. Right paid leave
vii. Right to maternity leave\(^98\) (art. 10)
viii. Other

d. Trade union rights\(^99\) (art. 8)
i. Right to organise
ii. Right to federate
iii. Right to operate freely
iv. Right to strike

e. Right to social security (art. 9)

f. Right to adequate standard of living\(^100\) (art. 11)
i. Right to food
ii. Right to shelter
iii. Right to clothing

g. Right to health (art. 12)
h. Right to education (art. 13)
i. Right to take part in cultural life (art. 15)
j. Negligence\(^101\)

3. Women’s Rights\(^102\)

4. Children’s Rights

5. Rights of Racial Minorities

6. Right of Refugees

---

\(^{98}\) Since the CCPR guarantees the right to freely enter marriage, I would include the reference under article 10(2) relating to working mothers here.

\(^{99}\) The CCPR already provides for the right to form trade unions. However, for consistency I would include this right here and use the CPPR classification to deal with all other matters relating to association.

\(^{100}\) It is recognised that some of the issues that may be presented here are not ammenable to complaints, especially as regards the right to clothing, but the category is included for completeness.

\(^{101}\) See previous comments on this matter.

\(^{102}\) Sub-categories here, as with the other rights mentionned below, could reflect the rights that are additional in these Conventions to those set out in the CPCPR and CESCR and/or the kinds of cases the Commission is likely to receive concerning them.
B. Recommendation 2: Re-design of reports

The following are prototypes of possible reports. Naturally, there are a number of ways to design complaint management information reports and these examples should not be seen as ‘best’ models, rather they are meant as an aid to the Commission in determining its own information needs.

The prototype tables presented are set out according to objective (input, output, effectiveness; efficiency). They illustrate the kind of data that should be presented and the periodic (in brackets) suggested for the report. The existing NHRC case classification system, except as noted in the footnote has been maintained in the preparation of the prototypes. It follows from recommendation 1, however, that I would alter these when an automated complaint handling system (ACHS) is being prepared, if not before.

Finally, please note that reporting tables are not presented for decisions resulting from the eventual introduction of ADR. When and if ADR is introduced, corresponding tables should be developed.

103 I have moved as much as I could out of ‘miscellaneous’ – for example, disappearance (non-State actor) and jail issues to Civil and Political Rights, where I believe they properly belong. I have also joined the two ‘Specific group rights’ categories. Finally, I have removed ‘Sou Motou’ from the classification as it is not a type of violation but a method of case creation. Table 1d gives data on such complaints, however.
## 1. Data on Work Input

Table 1a: Number of cases filed with the NHRC, by district and alleged violation (monthly, quarterly and annually)\(^{104}\)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>Eastern</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Central,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mid-western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Far-western</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all districts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Disappearance/extra-judicial killing (State actors)</strong></td>
<td>Eastern</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Central,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mid-western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Far-western</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all districts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Disappearance (non-State actors)</strong></td>
<td>Same divisions as above(^{105})</td>
<td></td>
</tr>
</tbody>
</table>

\(^{104}\) It should be noted that the ACMS should also allow the automatic extraction of subsets, for example, the number of cases files against a particular Government office.
### Alleged Ground

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Torture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Sub-total, Civil and Political Rights Cases

### Economic, Social and Cultural Rights Cases

<table>
<thead>
<tr>
<th>Economic, Social and Cultural Rights Cases</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all ESCR cases**

### Specific Group Rights Cases

<table>
<thead>
<tr>
<th>Specific Group Rights Cases</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

To preserve paper, I will not repeat the divisions into districts throughout the table, but these should be considered to exist throughout.
### Table 1b: number of cases received by alleged perpetrator (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Perpetrator</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td></td>
</tr>
<tr>
<td>Prisons</td>
<td></td>
</tr>
<tr>
<td>Government Institutions</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
</tr>
<tr>
<td>Rebel groups</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

---

106 I do not understand this category and if possible would move it to the appropriate existing category of rights.

107 The ACMS should allow the generation of additional reports that provide data on alleged perpetrator and violation cited. In addition, when district offices are established, the data should be further sub-divided by district.
### Table 1c: Number of cases received, by source (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Method of Communication of Case</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-person enquiry</td>
<td></td>
</tr>
<tr>
<td>Written enquiry (including facsimile and e-mail)</td>
<td></td>
</tr>
<tr>
<td>Telephone enquiry</td>
<td></td>
</tr>
<tr>
<td>Initiated</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Table 1d: Number of cases initiated by the Commission, by alleged violation and perpetrator (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Violation</th>
<th>Alleged Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td><strong>Total Initiated</strong></td>
<td></td>
</tr>
</tbody>
</table>
TABLE 1e\textsuperscript{108}: Number of complaints accepted, alleged violator and district (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>Eastern</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Central,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mid-western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Far-western</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all districts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance/extra-judicial killing (State actors)</td>
<td>Eastern</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Central,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mid-western</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Far-western</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all districts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance (non-State actors)</td>
<td>Same divisions as above\textsuperscript{109}</td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{108} Tables 1e and 1f are only pertinent if the NHRC wishes to draw a distinction between cases received and complaints accepted. They are meant to give a measure of how many actual complaint forms are prepared and therefore how many actual investigations might take place.

\textsuperscript{109} To preserve paper, I will not repeat the divisions into districts throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sub-total, Civil and Political Rights Cases**

**Economic, Social and Cultural Rights Cases**

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all ESCR cases**

**Specific Group Rights Cases**

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugee rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service rights</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all specific group right cases**
Building Capacity of National Human Rights Institutions: The Case of Nepal

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>District</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous Cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation (private injury)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal, all miscellaneous cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total all cases</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1f: number of complaints accepted by alleged perpetrator (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Perpetrator</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td></td>
</tr>
<tr>
<td>Prisons</td>
<td></td>
</tr>
<tr>
<td>Government Institutions</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
</tr>
<tr>
<td>Rebel groups</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

2. Work Output

110 I do not understand this category and if possible would move it to the appropriate existing category of rights.

111 The ACMS should allow the generation of additional reports that provide data on alleged perpetrator and violation cited. In addition, when district offices are established, the data should be further sub-divided by district.
Building Capacity of National Human Rights Institutions:  
The Case of Nepal

Table 2a: Number of complaints forms reviewed by Commissioner-in-charge, by alleged violation and decision (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil and Political Rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preliminary Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance/extra-judicial killing (State actors)</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preliminary Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance (non-State actors)</td>
<td>Same divisions as above(^{112})</td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td>As above</td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{112}\) To preserve paper, I will not repeat the decision types throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sub-total, Civil and Political Rights Cases**

**Economic, Social and Cultural Rights Cases**

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all ESCR cases**

**Specific Group Rights Cases**

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugee rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service rights</td>
<td></td>
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</tr>
</tbody>
</table>

**Subtotal, all specific group right cases**
## Building Capacity of National Human Rights Institutions: The Case of Nepal

### Table 2b: Number of preliminary investigation reports reviewed by the Commissioner-in-charge, by alleged violation and decision (monthly quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Miscellaneous Cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation (private injury)(^{113})</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal, all miscellaneous cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total all cases</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Further enquiries needed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Full Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance/extra-judicial killing (State actors)</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Full Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

\(^{113}\) I do not understand this category and if possible would move it to the appropriate existing category of rights.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total, all decisions</strong></td>
<td>Same divisions as above(^{114})</td>
<td></td>
</tr>
<tr>
<td>Disappearance (non-State actors)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub-total, Civil and Political Rights Cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Economic, Social and Cultural Rights Cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{114}\) To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
Building Capacity of National Human Rights Institutions: The Case of Nepal

### Table 2c: Number of complaints initially reviewed by the full Commission following investigation by decision (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Further Investigation needed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
</tbody>
</table>

Note: **115** I do not understand this category and if possible would move it to the appropriate existing category of rights.
### Alleged Ground

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No violation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Further Investigation needed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violation noted, seek remedy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Disappearance (non-State actors)      | Same divisions as above\(^{116}\) |        |
| Torture                               |                               |        |
| Illegal Encroachment of personal liberty |                               |        |
| Freedom of the Press                  |                               |        |
| Jail issues                           |                               |        |
| Other                                 |                               |        |

**Sub-total, Civil and Political Rights Cases**

**Economic, Social and Cultural Rights Cases**

\(^{116}\) To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal, all ESCR cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Specific Group Rights Cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugee rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal, all specific group right cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Miscellaneous Cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation (private injury)(^{117})</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal, all miscellaneous cases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total all cases</strong></td>
<td></td>
<td>117</td>
</tr>
</tbody>
</table>

\(^{117}\) I do not understand this category and if possible would move it to the appropriate existing category of rights.
Table 2d: Number of complaints finally reviewed by the full Commission, by alleged violation and decision (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td><strong>Total, all decisions</strong></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>Disappearance/extra-judicial killing</td>
<td>Same divisions as above ¹¹⁸</td>
<td></td>
</tr>
<tr>
<td>Disappearance (non-State actors)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹¹⁸ To preserve paper, I will not repeat the divisions into decision types throughout the table but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sub-total, Civil and Political Rights Cases**

<table>
<thead>
<tr>
<th>Economic, Social and Cultural Rights Cases</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (gender)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (caste)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-discrimination (other)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slavery/servitude (Kamaiya cases)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all ESCR cases**

<table>
<thead>
<tr>
<th>Specific Group Rights Cases</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugee rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service rights</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal, all specific group right cases**
### Table 2e: Number of complaints forms reviewed by Commissioner-in-charge, by alleged violator and decision (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preliminary Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total, all decisions</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preliminary Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

I do not understand this category and if possible would move it to the appropriate existing category of rights.
### Table 2f: Number of preliminary investigation reports reviewed by the Commissioner-in-charge, by alleged violator and decision (monthly quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total, all decisions</td>
<td></td>
</tr>
<tr>
<td>Government Institutions</td>
<td>Same divisions as above</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td>As above</td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebel Groups</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Further enquiries needed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Full Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

120 To preserve paper, I will not repeat the divisions into districts throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>No prima facie case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Full Investigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government Institutions</td>
<td>Same divisions as above(^{121})</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebel Groups</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Table 2g: Number of complaints initially reviewed by the full Commission following investigation by alleged violator and decision (monthly, quarterly and annually)*

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>No violation</td>
<td></td>
</tr>
</tbody>
</table>

\(^{121}\) To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
### Alleged Ground

<table>
<thead>
<tr>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Further Investigation needed</td>
<td></td>
</tr>
<tr>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

**Total, all decisions**

<table>
<thead>
<tr>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td>Further Investigation needed</td>
<td></td>
</tr>
<tr>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

**Total, all decisions**

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>Same divisions as above(^{122})</td>
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</tr>
<tr>
<td>Government Institutions</td>
<td>As above</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebel Groups</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{122}\) To preserve paper, I will not repeat the divisions into districts throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Table 2h: Number of complaints finally reviewed by the full Commission, by alleged violator and decision (monthly, quarterly and annually)

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Decision</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>No violation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Violation noted, seek remedy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total, all decisions</td>
<td></td>
</tr>
<tr>
<td>Prisons</td>
<td>Same divisions as above(^{123})</td>
<td></td>
</tr>
</tbody>
</table>

\(^{123}\) To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
3. **Program Effectiveness**

*Table 3a: Number of complaints referred for remedy, by violation and result (quarterly and annually)*

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Response</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil and Political Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Arrest/detention</td>
<td>Recommendation accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recommendation not accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recommendation partially</td>
<td></td>
</tr>
<tr>
<td></td>
<td>accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No response</td>
<td></td>
</tr>
<tr>
<td><strong>Total, all responses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recommendation accepted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recommendation not accepted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recommendation partially accepted</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Alleged Ground

<table>
<thead>
<tr>
<th>Alleged Ground</th>
<th>Response</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total, all responses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disappearance/extra-judicial killing</td>
<td>Same divisions as above(^{124})</td>
<td></td>
</tr>
<tr>
<td>Disappearance (non-State actors)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illegal Encroachment of personal liberty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sub-total, Civil and Political Rights Cases**

**Economic, Social and Cultural Rights Cases**

- Education
- Housing
- Religion
- Non-discrimination (gender)
- Non-discrimination (caste)
- Non-discrimination (other)
- Slavery/servitude (Kamaiya cases)
- Health
- Food

\(^{124}\) To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
### Alleged Ground

<table>
<thead>
<tr>
<th>Subtotal, all ESCR cases</th>
<th>Response</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific Group Rights Cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugee rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal, all specific group right cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation (private injury)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal, all miscellaneous cases</td>
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<td></td>
</tr>
<tr>
<td>Total all cases</td>
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</tr>
</tbody>
</table>

**Table 3b: number of complaints referred for remedy by perpetrator and response (quarterly and annually)**

<table>
<thead>
<tr>
<th>Alleged Perpetrator</th>
<th>Response</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Recommendation accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recommendation not accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recommendation partially accepted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No response</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total, all responses</td>
<td></td>
</tr>
</tbody>
</table>

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125 I do not understand this category and if possible would move it to the appropriate existing category of rights.
### Alleged Perpetrator

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>Same divisions as above 126</td>
</tr>
<tr>
<td>Government Institutions</td>
<td></td>
</tr>
<tr>
<td>Private Institutions</td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
</tr>
<tr>
<td>Rebel groups</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Program Efficiency

**TABLE 4: Average time to handle closed complaints from date of first contact, by stage, (monthly, quarterly and annually)**

<table>
<thead>
<tr>
<th>COMPLAINT STAGE</th>
<th>AVE TIME (weeks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint Form Signed</td>
<td></td>
</tr>
<tr>
<td>Complaint submitted to Commission-in-charge for direction</td>
<td></td>
</tr>
<tr>
<td>Direction provided by Commissioner-in-charge</td>
<td></td>
</tr>
<tr>
<td>Submission of preliminary investigation report to Commissioner-in-charge</td>
<td></td>
</tr>
<tr>
<td>Decision of Commissioner-in-charge</td>
<td></td>
</tr>
<tr>
<td>Submission of full investigation report</td>
<td></td>
</tr>
</tbody>
</table>

126 To preserve paper, I will not repeat the divisions into decision types throughout the table, but these should be considered to exist throughout.
<table>
<thead>
<tr>
<th>COMPLAINT STAGE</th>
<th>AVE TIME (weeks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision of full Commission</td>
<td></td>
</tr>
<tr>
<td>Submission of final full investigation report</td>
<td></td>
</tr>
<tr>
<td>Final decision of the full Commission</td>
<td></td>
</tr>
<tr>
<td>Submission of Commission recommendations to perpetrator</td>
<td></td>
</tr>
<tr>
<td>Response of the perpetrator</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 10

HUMAN RIGHTS IN NEPAL: A SUMMARY
STATUS REPORT 2003

Introduction

This document is a brief summary of the “Human Rights in Nepal – A Status Report” published by the National Human Rights Commission.

The Commission firmly believes that in the contemporary world, it is impractical to discuss development of people and nations without considering human rights. This Report is expected to stimulate a serious debate among various Government bodies, donor agencies, local and international nonGovernmental organizations and the civil society on the correlation between human rights and development. Following such debates, if the authorities concerned implement the various national and international human rights instruments and related laws, the Commission would feel that it has made a genuine contribution toward positively enhancing the status of human rights in Nepal by carrying out the research and presenting this Report.

The research included literature review, regional seminars and focus groups survey. Both primary and secondary data have been used in preparing this Report. Additionally, the Constitution, national laws, rules and regulations, regional and international human rights covenants/conventions, particularly those to which Nepal is a signatory party, and media reports were examined, and relevant topics and issues were incorporated into the Report.

The first draft of the Report was reviewed by experts who provided detailed suggestions to improve the Report. The second revised draft was sent to a select group of reviewers, whose feedback was incorporated into the final Report.

Research work commenced in November 2001 and was completed by the end of June 2003. Therefore this report does not cover the events that have occurred after that date.

Due to the then prevailing political environment of the country the field work could not be conducted as extensively as desired, and certain areas were off limits for security reasons — especially since the armed conflict,
which was in full swing. The NHRC research team felt that the presence of the Maoists and/or State security personnel tended to inhibit adequate articulation of opinion in the discussions. Furthermore, due to other procedural constraints (such as meeting deadlines), questionnaires could not be disseminated widely on a national level as initially planned, and many interviews could not be conducted at the desired level and were instead limited to personal contacts and comparatively easy access to the interview subjects.

1. Nepal: A Contemporary Overview

Nepal is a small, landlocked South Asian country bordered by China to the north and India to the east, west and south. Its population is just over 23 million. The population is essentially rural (85 percent) where life expectancy averages 59 years for males and 58 years for females. Although only 20 percent of the total land area is cultivable, nearly 80 percent of the people rely on agriculture.

There are numerous castes and nearly 60 Janajati groups (indigenous peoples) in the country’s societal structure. Nepal is the only Hindu nation in the world and Hinduism is the religion of the majority, followed by Buddhism, Islam, Christianity and others.

In 1990, the “People’s Movement” ended the rule of absolute monarchy that had functioned within the framework of the 30-year-old partyless Panchayat system, followed by the restoration of the multiparty system. The interim Government promulgated a new Constitution of the Kingdom of Nepal in 1990 (hereafter referred as the Constitution), and declared Nepal a constitutional monarchy with a parliamentary form of Government.

Modern Nepal began to confront perhaps its most serious challenge in 1996 when the Communist Party of Nepal-Maoist (CPN-M) initiated a “People’s War,” i.e., an armed struggle, to overthrow the existing political structure. Political analysts and development experts noted that the conflict was the result of failed development. The ensuing violence spread in more than 50 of the country’s 75 districts. Torture, illegal arrests and abductions, killings, bombings, extortion and intimidation against civilians and public officials were perpetrated by both the State and the Maoists during the seven-year insurrection.
A brief ceasefire was first established while His Majesty’s Government of Nepal (HMG) and the Maoists held three rounds of talks between August and November 2001. The three main demands of the Maoists were: 1) an interim Government, 2) a constituent assembly, and 3) a round-table conference. On November 21, the Maoists unilaterally withdrew from the 3rd round of talks, and two days later broke the ceasefire by attacking the State security apparatus in different parts of the country.

On 26 November 2001, a state of emergency was declared. Extended twice, it lasted for nine months and was lifted on 27 August 2002. On 22 May 2002, Prime Minister Sher Bahadur Deuba dissolved the House of Representatives when his party, the Nepali Congress (NC), disagreed with him on the need to extend the state of emergency. On 4 October 2002, Mr. Deuba was relieved of his duties by His Majesty the King Gyanendra Bir Bikram Shah, invoking Article 127 of the Constitution. A few days later, His Majesty the King appointed Mr. Lokendra Bahadur Chand as the new prime minister. However, Prime Minister Chand resigned in late May 2003, and on 4 June 2003, His Majesty the King appointed Mr. Surya Bahadur Thapa of the Rastriya Prajatantra Party (RPP) as the new prime minister.

On 29 January 2003, a new ceasefire was declared between the Government and the Maoists, and the seven-year-old conflict has, for the moment, come to an end after claiming over 7,000 lives.

2. Evolution of Human Rights in Nepal

During the partyless Panchayat rule, some international human rights instruments were ratified, but most of these instruments were of little significance to Nepal’s internal situation. There has been significant progress since the emergence of multiparty system of governance, though a number of important treaties, protocols and optional protocols remain to be ratified. To date, Nepal has ratified 16 international treaties and conventions thus unconditionally agreeing to respect various types of human rights.

However, progress has been slow in incorporating international human rights laws within Nepal’s domestic legislation. Furthermore, despite the ratification of international human rights treaties and conventions, the Government continues to enforce a number of laws inconsistent with, or contradicting the norms and values set by the international human rights instruments. For example, whilst the State Cases Act 2049 (1992) requires
the police to record a suspect’s deposition in the presence of a Government attorney the power of interrogation lies implicitly with the police. The Act makes no reference to the fundamental right of the suspect to remain silent, nor to the basic right to a fair trial, even though these rights are recognized by the Constitution as fundamental rights. Domestic legislation has therefore failed to fully integrate the norms and values set by international human rights instruments. Since 1990, the Supreme Court of Nepal has made some efforts to internalise the provisions of international conventions in practice. However, the Court is yet to consistently make such efforts.

The prompt domestication and effective enforcement of international human rights instruments in Nepal remain a problem. Government officials themselves have been found to be frequently involved in acts that violate or disregard obligations established by human rights treaties and conventions as well as the provisions of human rights.

A major benefit of the restoration of multiparty system has been the blossoming of human rights organizations in Nepal, of which there were very few before 1990. Today, several organizations are active in the field of human rights focusing on a range of issues—child’s rights, women’s rights, legal aid, prison reform, etc. As a result, the levels of awareness and activities on human rights issues have increased inducing positive changes in the Nepalese society.

After a long struggle on the part of human rights NGOs, professional organizations and civil society, the National Human Rights Commission (NHRC) was established in 2000 (2057) under the Human Rights Commission Act 1996 (2053). It is a landmark statute for promoting and protecting human rights in Nepal. NHRC has the authority to probe into occurrences of, and attempts at human rights violations or human rights-related negligence or recklessness committed by any person, institution or organization. With regard to procedural matters, the Commission has a power similar to that of a court for the purpose of taking action on petitions, complaints and the conduct of fact-finding missions. The Commission is also empowered to approach any institution or authority for necessary action against those who allegedly violate human rights, and, where necessary, to recommend the terms of compensation to be paid to the victim.
3. **Constitutional Guarantees**

The Constitution states unequivocally that all citizens are equal before the law and prohibits discrimination on the basis of sex, religion, caste and ethnicity and political ideology. It further guarantees the right to life, by ensuring that the State will not enact laws prescribing the death penalty, and liberty. Nepalese citizens are also guaranteed rights, such as the right to freedom of opinion and expression, freedom to practice any profession and engage in any occupation, industry or trade, the right to equality and freedom to form unions and associations, rights regarding criminal justice, cultural and educational rights, as well as the right to religion, rights against exploitation and against forced exile. Several of these rights cannot be suspended even during a state of emergency.

**Respect to Life and Liberty**

In the course of the armed conflict the State authorities have been engaged in incidents of arbitrary arrest and detention, torture and other inhuman and degrading treatment, abductions and “disappearances” (missing cases) as well as extra-judicial killings. Likewise, the Maoists are also actively engaged in incidents of kidnap and detention, torture and other inhuman and degrading treatment, abductions and “disappearances”, use of people as human shields and killings. Such actions of the State and the Maoists have seriously jeopardized people’s human rights, especially their right to life and liberty. The killings increased alarmingly during the year 2002, when 3,297 people were killed by the State and 1,358 by the Maoists. A study conducted by the Informal Sector Service Centre in 2001 found that the main groups whose human rights are most likely to be violated included farmers, followed by political workers and students. According to local media reports, by the end of the year 2002, over 7,000 Nepalese had been killed. Until January 2003, when the ceasefire came into effect, an average of 16 Nepalese died each day as a consequence of the armed conflict.

After the declaration of the state of emergency in November 2001, the Terrorist and Destructive Activities (Control and Punishment) Act (TADA) was promulgated defining a number of acts as acts of “terrorism.” TADA’s Section 20 “grants prosecution immunity to members of the security forces ‘or any other person’ for ‘any act or work performed or attempted to be performed by him in good faith under the Act.’” Thus, TADA aids and abets those who, under the guise of maintaining ‘law and order’ or ‘security concerns,’ violate the human rights of the people. Moreover, the dead were usually declared “terrorists” by the State without
scrutiny of identity and confirmation of their involvement in terrorist activities.

**Freedom of Opinion and Expression**

One of the most positive aspects of the restoration of the multiparty system was the emergence of pluralism and openness in the national media since 1990. The Constitution specifies that all citizens have freedom of opinion and expression, and that State may not censor any news item or reading material. The right to freedom of opinion and expression under Article 12(2) *(a)*, the freedom of press and publication rights under Article 13(1)(2) and the right to information under Article 16 of the Constitution are the foundation of press freedom in Nepal. Thus, Article 16 of the Constitution states that every citizen shall have the right to demand and receive information on any matter of public importance, “provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.” But a major hindrance to achieving the openness promoted by the Constitution is the continued existence of the pervasive culture of secrecy, especially within the official bureaucracy, which believes that it is in the public’s interest to keep the workings of the Government secret.

The Press and Publications Act prohibits the publication of any material deemed to be disrespectful toward the King and members of the royal family. Information that may undermine security, peace, order and sovereignty of the nation or cause discord among people of different castes and ethnicity may also be prevented from being published. It must also be noted that the application of the Press and Publications Act is not uniform and governs only the private-sector media. The official media is governed by separate Acts, for example National News Agency Act, 1963 (B.S. 2019) and Gorkhapatra Corporation Act, 1963 (B.S. 2019). Similarly, the provisions of the Working Journalists Act do not apply to journalists working for the Government media.

There has been a phenomenal increase in the number of newspapers in the past decade — from 455 in 1990 to 1,620 in 2001, although only 192 appear regularly. According to statistics available, Kathmandu district has the highest concentration of registered newspapers (735). While at least one newspaper is published in each of 47 districts, none appears in 28 of the total 75 districts of Nepal. Besides the increase in the number of printed media, Nepal has also witnessed a significant growth in broadcast media, especially with privately owned FM radio stations and cable
television channels. The media, however, is mainly urban-centred, elite-oriented and highly politicised. Since much of the media is under the direct or indirect control of the Government, corporate houses and, especially, political parties and organizations, it has to put up with the frequent accusation that it often represents the views of their masters.

In the year B.S. 2058 (2001/02) Government arrested more than 170 media persons in Nepal, and perhaps as many as 21 were still behind bars as of January 2003. This is the highest number of media people ever arrested in the history of Nepalese journalism. Despite “credible evidence” that Krishna Sen, editor of Janadesh, a weekly paper allegedly sympathetic to the Maoists, was arrested on 20 May 2002, the authorities have continuously denied this allegation. An international human rights organisation reported that Sen was beaten and subsequently died in police custody. The Nepal Government’s inquiry committee concluded that it had no evidence to reach any firm conclusion as to whether the journalist was dead, imprisoned, or in hiding.

The Maoists also abducted media people, attacked journalists, and, like the State, prevented media persons from visiting and/or from gathering information in areas under their control without their prior approval, or imposed censorship upon news reports. They also bombed the media building of the Gorkhapatra Corporation and damaged and destroyed properties and assets belonging to various media outlets. The Maoists, moreover, destroyed several telecommunication towers and facilities in rural areas, violating the people’s right to information.

At times, the print media and journalists have been accused of defaming innocent people. In October 2002, the media faced the wrath of the people when Janastha published a nude photograph of an actress leading her to commit suicide. The Press Council’s chairperson acknowledged that the editor of Janastha had violated “right to privacy the and instigated her death.”

Right to Freedom of Association

The Constitution guarantees the right to organize by forming unions and associations. But laws can be and have been enacted to impose restrictions on any act that may undermine the sovereignty and integrity of the Kingdom of Nepal; acts that may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities; and acts that may instigate violence or may be contrary to public morality. The trade unions in Nepal are still struggling to organize workers, bargain
collectively and conduct educational programs for workers. Furthermore, while union participation in the formal labour sector is significant, it accounts for only a small portion of the total labour force because HMG is the chief formal sector employer in Nepal. The informal sector is another important source of employment, but mechanisms are not in place for the workers in this sector to get organized.

In 1992, the Parliament passed the Labour Act and the Trade Union Act, which, among other things, provide for collective bargaining. But Government in 2001 introduced the Public Utility Act, which has had a significant adverse impact upon the right of workers to bargain and go on strike. Collective bargaining agreements cover an estimated 20 percent of wage earners in the organized sector, but a large segment of the labour force remains unable to use collective bargaining effectively due to inexperience and employers’ reluctance to bargain. The problem is very serious with regard to the workers engaged in semi-formal and informal sectors as they lack an organised forum to protect their legitimate interests and other rights related to the workers. Lately, the force of globalisation has posed a serious threat to the workers’ right to associate and enter into collective bargaining. The private sector is already advocating for “liberal” labour laws in Nepal.

4. Penal System

Nepal’s penal system lays great emphasis on punishment, with minimum concern for reform and rehabilitation. One Nepalese term for prison is karagar which indicates a state of isolation and confinement. Another Nepalese word for prison is khor, meaning a cage, a shed, or a pen where animals are confined. This terminology is emblematic of the traditional Nepalese attitude toward prisoners that puts prisoners at a level similar to that of animals.

The overwhelming majority of prisoners in Nepal are detained in old, dilapidated buildings. At the end of 1999, there were approximately 6,000 inmates in Nepalese prisons, a figure that increased sharply with the escalation of the armed conflict and imposition of the State of Emergency. It is now estimated that there are more than 10,000 prisoners in the country. Prison conditions are poor with crumbling walls and ceilings, cold mud floors, leaking roofs, dampness due to a lack of ventilation and foul smelling toilets which add to the prisoners’ misery. Many prisons hold twice their official capacity. To cite only one example, the Bhairahawa prison holds 186 prisoners, over three times its official capacity of 50.
Both international law and Nepal’s own Prison Act 1963 (B.S. 2019) stipulate separate detention of convicted prisoners from those awaiting trial. However, the provisions are seriously violated. Convicted prisoners and detainees are often locked up together in the same prison area. No special provisions are made, however, for the accommodation and special needs of the elderly, mentally disabled, or pregnant prisoners or for those with dependent children.

There are at least 11 laws that address many aspects of prisoners’ various rights including basic needs. The Police Act 1955 (B.S. 2012), The Civil Rights Act 1955 (B.S. 2012), The Prison Act 1963 (2019), The Prison Rules 1963 (2020) and The Torture Compensation Act 1996 (2053) are some of the laws affecting rights of prisoners directly or indirectly. However, most of these laws are not appropriate for the 21st Century.

There are no separate prisons for women in Nepal. Women sentenced to imprisonment have to be kept in separate cells from women awaiting trial, but in practice, it is not always the case. Besides suffering from physical and psychological trauma, female prisoners often become victims of sexual abuse and exploitation by prison wardens and male prisoners. Authorities do not take into consideration the female inmate’s reproductive health needs or her specific nutritional requirements during pregnancy. Moreover, general health care is lacking and visits by medical professionals are rare. Additionally, women prisoners are not trained in income-generation skills as are their male counterparts, and there are no Government rehabilitation centres where freed women prisoners can seek shelter when their families refuse to accept them back. Indeed, the family too can withdraw its emotional and financial support to a released female prisoner who is seen as having brought shame upon its family members. Lack of financial and family support also prevents them from seeking legal recourse.

Women in police custody are more vulnerable to a variety of abuses because most of them are not aware of their legal rights and custodial care in the police station lacks strict supervision.

The procedures that precede and surround criminal trials are complex, long-winded and arduous and sometimes lack clarity, causing unnecessary delays. Bail procedures can appear contradictory since there is an absence of clear-cut principles regarding granting of bail.

The Prison Act 1963 regulates the prisoners’ right to meet and communicate with their immediate family, friends and relatives.
According to the Act, communication in the inmate’s mother tongue, if different from Nepali, is strictly prohibited since the prison staff is required to understand all communication between the inmates and their visitors. Ignoring the right to privacy, prison authorities scrutinize or read all correspondence to and from the prisoners. The ‘jailer’ (prison warden) has the right to investigate and punish certain crimes without any possibility of appeal for the prisoner. Furthermore, the prison staff may use any weapon against the prisoners resorting to verbal abuse or attempting to escape, or to protect themselves against prisoners using a weapon. Even if the use of a weapon results in the death of a prisoner, the assailant shall not be subjected to punishment. Such draconian measures, among others, directly violate the human rights of the prisoners.

After consultation and collaboration with the civil society, prisoners and related institutions, the Government introduced training programmes for prison administrators and formulated policies to protect and promote prisoners’ human rights. As a result, prisoners now have some access to the outside world including increased access to radio and television. To ensure that the State respects prisoners’ rights, prison visits by institutions such as the Parliament’s Human Rights Committee, the National Human Rights Commission and the Supreme Court have increased.

5. Torture

Despite constitutional prohibition, the use of torture is a common phenomenon in Nepal. It is inflicted as a form of punishment as well as a method to extract confession by the State authorities. In a survey conducted among 95 percent of the prisoners detained in Nepal’s prisons, 70 percent reported that torture had always been practiced and that it occurred most often in police custody. Army and prison officials, forest guards and personnel in other Government branches have also been accused of torturing people. According to the survivors of torture who reported to the Centre for Victim of Torture in 2002, the majority of people (678) reported being tortured by the police, followed by the army (201) and the Maoists (180). Prison and forest guards reportedly tortured 31 and 9 people respectively.

While the reported numbers of victims of torture inflicted by the Maoists are quite low (32, 23 and 37 in the years 1999, 2000 and 2001 respectively) compared to those involving the State authorities, the number of the victims of torture by Maoists increased to an overwhelming 180 in the year 2002. During the years of conflict, the Maoists primarily targeted political leaders, school teachers and those considered to be influential in
Building Capacity of National Human Rights Institutions:  The Case of Nepal

the community, as well as suspected informers. The National Human Rights Commission itself received 23 petitions on torture in the year 2001. However, many torture cases also go unreported due to fear of reprisal.

Some of the most widely used forms of torture in Nepal are beating on soles of feet (known as *falanga*), random beating, electric shocks, hooding or blindfolding, rolling a weighted stick along the prisoner’s thighs that causes muscle damage (*belana*), burning with cigarette stubs and forcing the detainee to assume awkward and painful postures (e.g., ‘chicken’ posture). The use of animals, insects, needles as instruments of torture, food and water deprivation, forcing to consume excreta, removal of the ‘sacred thread’ of upper-caste detainees, long-term isolation, dark confinement, subjecting the victim to loud noise are also commonly used. Government has often been accused of turning a blind eye on the perpetrators of such torture.

The Nepalese laws related to torture or to the penitentiary system do not provide precise provisions for competent and impartial investigation of torture cases. Except for a few cases of custodial deaths, there are very few instances for which a committee to investigate torture cases was set up by the Government. Whenever a committee investigated a case of custodial death or torture, its recommendations were never made public and the concerned authorities invariably ignored them.

The Government enacted the Torture Compensation Act (TCA) in 2053 (1996) for providing compensation to victims of torture. The Act stipulates that, at the start of the detention and upon release, the authorities must maintain detailed accounts of the physical and psychological status of the detainee and must send a copy of these accounts to the relevant district court. According to the Act, a victim of torture is entitled to receive a maximum of one hundred thousand rupees as compensation. However, Nepal’s TCA is inconsistent with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since it does not define torture as a criminal offence. Furthermore, the TCA does not provide for the protection of witnesses and victims even if such arrangements are crucial in torture cases. Also to be noted is that in Nepal, there is no official institution or agency specifically authorized to initiate impartial investigation of torture.

In 2057, the NHRC introduced Complaints, Action and Determination of Compensation Rules, 2001 which allows it to fix the amount of compensation for torture and other human rights violations, including torture. In the case of torture, the Commission can impose compensation
up to Rs. 100,000.00 on the perpetrators (s) depending upon the nature of torture, effect of the torture on the victim, cost of treatment, etc. In the event of the death of the victim, the compensation amount can be set within the range of Rs. 100,000.00 to Rs. 300,000.00 depending upon a number of factors. Most importantly, the National Human Rights Commission can instruct the Government to make the Government officer, who is responsible for the torture, fully or partly responsible for the act, by recovering the amount of compensation from his/her entitlements.

6. Fair Trial

One of the most remarkable achievements of the multiparty system in Nepal is the establishment of an independent judiciary responsible for upholding the most fundamental human rights of the Nepalese people, i.e., the right to justice. The judiciary has law-enforcing capacity and its decisions are binding to the Government. However, the Government has at times attempted to challenge the judiciary by not obeying the verdict of the court.

Meanwhile, 35 percent of the criminal cases are still tried by quasi-judicial authorities such as the Chief District Officer, the Forest Officer, the Conservation Park Warden, the Customs Officer, etc., even though such officers may not possess the knowledge and skills of law and justice required. Many of the institutions they represent not only investigate the offence, but also possess the power to prosecute and adjudicate them. Under the pretence of honest duty to the Government, they usually conduct criminal trials with disregard to the constitutional guarantees for fairness of proceedings. Moreover, detainees almost without exception are refused access to legal counsel within the initial 24 hours of arrest, as required by law.

The Government continues to enforce a number of laws that are derogative to the personal liberty and dignity of human beings. For instance, the Public Security Act 1989, which was enacted during the Panchayat rule, allows the authorities to detain any person allegedly threatening domestic security and tranquillity, amicable relations with other states and relations between citizens of different classes or religions. Persons detained under this law are considered to be in preventive detention, and the detention period may extend to up to 6 months. The Act permits such detention without any criminal charge being specified. In 1991, an amendment was made to the Act which permitted the authorities to apply an additional six-month-period of detention by simply submitting a written notice to the Home Ministry. Such draconian measures still prevail. The Public
Offence and Punishment Act 1970 is another statute that grants permission to authorities to carry out arbitrary arrest and detention. This Act covers such crimes as the disturbance of peace, vandalism, rioting and fighting. In the past, it was often used by the Chief District Officer to suppress political activists and leaders. After 1990, the ruling party used it against its political opponents. During the year 2001 alone, this Act was invoked 1,864 times by the authorities.

According to a study, only 56 percent of the prisoners have access to lawyers during trial while the remaining 44 percent face trial without legal representation. Furthermore, a great number of the prisoners were found unable to consult a lawyer within the initial 24 hours of their arrest, and many have no knowledge of their right to legal assistance.

Since Nepal’s judicial system does not have a separate criminal court, excessive civil caseload in trial courts dramatically overshadows the criminal trials. The existing civil caseload takes more than 70 percent of the judicial time and resources at all levels of court. The large part of judiciary time taken by civil cases implies a greater waiting period for criminal cases. The average caseload of a trial judge is 661 cases per annum, and such excessive overload tends to impair the possibility of a fair trial. Under the present trial system, each criminal case takes several non-consecutive sessions for completion, meaning that a judge has to perform manifold actions in each case.

Government attorneys also lack effective case filtering and funnelling mechanisms. At the stage of prosecution, of the total cases investigated by the police, an average of only 5 percent of the cases are filtered, indicating an extremely high level of random prosecution.

Furthermore, inadequate funds for the judiciary to function effectively have been a major hurdle in ensuring fair and impartial trials. The increment of the judicial budget over the past decade has been less than 0.10 percent. Expenditure for the development of the judiciary has not been taken into account in the national budget. There is thus an important concern as to whether an impoverished judiciary can effectively deliver competent and independent justice as envisaged by the Constitution. In addition, low public faith in the judiciary due to its inability to maintain full impartiality and to keep the system free from corruption is another challenge faced by the judiciary in Nepal. Moreover, free and fair justice cannot be guaranteed in a system where the same institution has the right to investigate, prosecute, as well as adjudicate the alleged offence.
7. Basic Needs and Human Rights

Fulfilment of basic needs is one of the key indicators of realisation of human rights. Therefore, if a nation is to progress, it must ensure that the basic needs of its people are met. In this regard, the Constitution envisages the concept of basic needs under the Directive Principles and Policies of the State. It specifies that the State shall create conditions for the economic progress of the majority of the people, who are dependent upon agriculture, by raising agricultural productivity and by launching land reform programs. As such, fulfilment of various economic and social rights is a non-binding responsibility of the Government.

Right to Health

The terminology ‘Right to Health’ means right to health care services and the right to a number of underlying preconditions for health, such as safe drinking water, adequate sanitation, occupational health and environmental health.

Although Nepal has made significant improvement in the health sector, more progress is still needed to provide basic health care services to the Nepalese people. In the period 1976 to 1996, the average life expectancy in Nepal increased by over 13 years from 32 to 55 years in 1996 (today it is 59). However, the average life expectancy in Nepal is still one of the lowest in the world, primarily due mainly to a limited access to health services as well as insufficient food intakes. Although public expenditure in the health sector increased from 3.2 percent in 1993/94 to 5.7 percent in 1999/2000, the country’s total public sector health expenditure amounted to only about US$ 2 per person per annum in 1999/2000.

Children are most affected by the lack of health care services. Diarrhoea is still the major cause for the death of a large number of children. Twenty percent of the children suffer form severe malnutrition and 48 percent from moderate malnutrition resulting in stunted growth. Most of the hospitals in the rural areas are understaffed and very few doctors are available. There are only 5 doctors for every 100,000 people in the country, and most doctors are concentrated in the capital city Kathmandu.
One recent survey estimates that 80 percent of the households in Nepal have access to piped or tube-well water, but the quality of drinking water is at best poor, and water-borne diseases are responsible for a variety of illnesses, some of which even cause death.

The Tenth Plan (2002-2007) notes that encouraging improvements have been made in the health sector. The child mortality rate decreased from 107 to 72 per 1,000 live births and maternal mortality from 580 to 540 per 100,000 live births between 1987 and 2002. Quite significant is the increase in the number of people using family planning methods, from only 3 percent in 1976 to nearly 40 percent in 2001.

HIV/AIDS has also become a major concern in Nepal. According to the WHO/UNAIDS Global Report, there are nearly 60,000 Nepalese living with HIV/AIDS in Nepal. Those living in the urban areas are more at risk of contracting the disease than those living in the rural areas. The most vulnerable groups include commercial sex workers, intravenous drug users and migrants. Young people are also becoming increasingly exposed to risk, particularly girls.

In the past decades, private health care services have grown rapidly. While this has eased the pressure on the public health care system, private health care facilities remain unaffordable for the majority. Furthermore, these facilities are not being monitored to ensure their compliance with the minimum standards required for delivery of health services, and are not accountable for medical negligence, which violates the principle of right to life.

The Tenth Plan envisages decentralization of the health sector and seeks the involvement of NGOs as well as of the private sector in the establishment and management of health care services. However, such transfer of responsibility under the decentralization process can be successful provided the Government is able to guarantee adequate funding and create a conducive macro-level policy environment including implementation of training programmes. The Government is also committed to developing alternative and supplementary health care services such as Ayurveda, homeopathy, Yunanni, natural therapy and to increase the access and use of locally available medicinal herbs.

**Right to Education**

Education is recognised an essential human rights for preservation and enhancement of the inherent dignity of the human beings. As one of the
signatories to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government is obliged to fulfil various provisions stated in Articles 13 and 14 of the ICESCR with regard to the right to education. Among them, the most important are: compulsory and free quality primary education to all, progressively free technical and vocational education, intensification of fundamental education for those who have not received or completed the whole period of their primary education and the liberty of parents or guardians to choose for their children schools other than those established by the public authorities, which conform to minimum educational standards. In addition, Article 13 of the Convention recognizes the liberty of parents or guardians to ensure the religious and moral education of their children in conformity with their own convictions.

According to the Central Bureau of Statistics 2001, the overall literacy rate of Nepal is almost 54 percent, but there are significant disparities where geographical regions and ethnic compositions are concerned. In the urban areas, the literacy rate is 67 percent, compared to 37 percent in the rural areas. The lowest literacy rate has been noted in the Mountain region (28 percent), followed by the Terai (33 percent), while the Mid-Hill region has the highest literacy rate with 45 percent. However, nearly 63 percent of the students either drop out of school or repeat the 1st grade. In terms of ethnic/caste groups, while nearly 62 percent of the Brahmins are literate, only 15 percent of the Chepangs, an indigenous group, are literate. Likewise, gender-based discrepancy is also observed with a literacy rate of 39 percent for girls, compared to 61 percent for boys.

In the last two decades, private schools, colleges and universities have mushroomed all over the country. While they are playing a significant role in providing better education to middle and upper-middle class children, majority of the Nepalese people cannot afford them.

Politicisation of education has been a serious factor violating children’s right to education. The educational system has been one of the main targets of the Maoists and the mainstream political parties, who repeatedly forced the closure of private educational institutions. However, all concerned, especially the political parties and their affiliated student wings, should carefully consider whether the dismantling of the private school system is an appropriate solution to the problem of inequitable education. They should ask themselves whether the quality of the nation’s educational system is best achieved by raising the standard of the institutions of lower quality or by lowering the quality of educational institutions that are perceived to possess higher standards. This is not to
say that the private schools in Nepal should not be regulated. They have to be regulated to ensure that they are indeed delivering quality education, have necessary minimum physical infrastructure and health and safety standards, and that they come under purview of the taxation system.

In its Tenth Plan, the Government is proposing the empowerment of local bodies and communities in the formulation of educational policy and management of educational institutions. According to the Plan, emphasis will be given to formal and non-formal, technical and vocational education in order to produce skilled workers and professionals. The Tenth Plan endorses compulsory training for primary school teachers as well as a provision for the granting of scholarships to qualified poor and brighter students. Meanwhile, the Government will continue to encourage private sector participation in the educational field.

**Right to Work**

The right to work means the right to participate in the productive and servicing activities of human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living. The right to work thus ensures that nobody is excluded from the economic sphere. The type of work a person does depend on access to resources, education and training. Work can be enjoyed as a wage-employed person or as a self-employed person. A crucial feature of work is that it allows persons to earn their living.

The Constitution does not explicitly recognise the right to work as one of the fundamental rights of the people. But there are provisions in the Constitution under which the State has responsibility to take steps towards development of employment opportunities.

A large majority of 11.7 million labour force is self-employed, including unpaid family workers. Furthermore, of the total economically active labour force, 4.9 percent remain fully unemployed; and of the total labour force in employment, 47 percent is in a state of underemployment, mostly engaged in agriculture. The problem of the self-employed is that they work for only three months in the agriculture sector and remain without work for the rest of the year due to the seasonal nature of the work in agriculture sector. Consequently, they are thus forced to move around, either within the country or into India or beyond to look for jobs.

Although slavery was officially abolished in 1925 in Nepal, the system of Kamaiya (bonded labour) continued to flourish until very recently.
Kamaiyas are overwhelmingly the Tharu people of the Terai and are primarily agricultural workers. The Government made a landmark decision on 17 July 2000 to outlaw this pernicious system. It declared also that it would rehabilitate the Kamaiyas and pay off their debts, freeing them from ancestral bondage. Later, there were reports that landlords threw out thousands of Kamaiyas off the land and out of their homes. Consequently, the freed Kamaiyas were left without work, food and shelter, and many Kamaiya children died from hunger and disease.

The Government has taken some positive initiatives to improve employment and conditions of employment, but many of them have not been effective for various reasons. In 1998, the Government announced an employment plan, which would provide training to 120,000 people and create 140,000 more jobs. It further promised to employ at least 200 people from each constituency, but this ambitious plan never materialized. The armed conflict caused further destabilization among the rural poor — as many as 60,000 people from various mid-western and far western districts of Nepal have reportedly left their villages, either seeking safe haven from the armed conflict or in search of jobs, or both.

In 1999, the Government introduced a non-discriminatory minimum wage of Rs. 65 per day for eight hours of work in the agricultural sector for men and women workers. However, this rule of non-discrimination is hardly ever enforced. Most workers have no idea about the minimum wage or other rules governing their working conditions, and those who said they were aware of their rights were concerned about losing their jobs if they were to complain about their working conditions or about not receiving wages as fixed by the Government. Wages in the unorganised service sector and agriculture often are as much as 50 percent lower.

In 2000, the Government passed a legislation raising the minimum monthly wage for unskilled labour, semi-skilled labour, skilled labour and highly skilled labour. Likewise, the Government has set the minimum monthly wage also for children aged between 14-16. It has also fixed a 48-hour work per week with one day off every week and a maximum overtime of 20 hours per week.

**Right to Adequate Food**

The Committee on Economic Social and Cultural Rights on the Right to Adequate Food in its General Comments on the Right to Food explains that “the right to adequate food is realized when every man, woman and child, alone, or in community with others, has physical and economic...
access at all times to adequate food or means for its procurement.” It should not be interpreted narrowly in terms of minimum calorie requirements, proteins and other specific nutrients. Whilst the explanations note that the right to food has to be realised progressively, it clearly states that the State is responsible to take the necessary action to mitigate and alleviate hunger, even in times of natural or other disasters.

The Constitution does not guarantee the right to adequate food, although it does refer to the State’s policy to provide social security and eradicate poverty. In a period of two decades, from 1960 to 1980, Nepal became a net food importer from its previous status as a food exporter. Forty-five districts in Nepal are ranked as food-scarce areas, and the situation has gradually worsened. As for the Terai, it faces an unpleasant paradox: on the one hand, a number of Terai districts produce surplus food, but the lack of proper infrastructure prohibits transfer of the surplus to the deficit areas; on the other hand, since the price of food grains in the Terai is much higher than in the nearby border towns of India, people tend to buy the Indian food grains hurting the Terai farmers.

In 1997, the World Food Programme reported that 35 percent of the Nepalese population consumed less than the required daily minimum of 2,250 calories. A recent study conducted in 20 districts of various ecological zones found that of the 63 percent of the population owning farmland, only 1.3 percent produces sufficient food for the entire year, and half produce food only sufficient for 3 months. Skewed land distribution among agriculture households, land fragmentation, improper and inadequate use of fertilizers, ineffective or antiquated agricultural implements and methods, badly damaged roads or lack of roads, and limited outreach of irrigation systems along with population growth have been some of the persistent problems impeding people’s access to adequate food. Moreover, discontinuation of Government subsidies for fertilizers and small irrigation systems also affect the poor. The Government claims that it is trying to improve and increase food production by improving the irrigation systems and that it has been striving to provide seeds and fertilizers to farmers as well as subsidizing fertilizers. The Government also claims that food deficit areas are supplied with extra food from internal and external sources, such as the food-for-work program and the World Food Programme. But a significant impact of these measures remains to be seen.

No major land reform has been attempted after 1964, when the late King Mahendra introduced significant changes in landownership and ceilings on landholding. Thus, the need for land and agrarian reforms are still to be
addressed adequately; tenants have not yet obtained security of tenure; and a great number of peasants do not yet possess any land.

Right to Adequate Housing

The UN Committee on Economic, Social and Cultural Rights has interpreted the right to adequate housing as the right to live somewhere in security, peace and dignity. Being a signatory to ICESCR, the Government is expected to impartially recognize the right to housing, as stated in Article 11, by undertaking a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing, and by protecting and improving houses and neighbourhoods rather than damage or destroy them. This provision requires the Government to address several institutional, legal and cultural barriers to access of women to property, such as land and housing. It also requires the Government to ensure the refugees and internally displaced persons to have free and fair exercise of their “right to return to [their] home and place of habitual place of residence.” People’s ability to enjoy all economic, social and cultural rights is dependent upon the right to adequate housing. As such, it comes within the purview of socio-economic justice as well.

Nepal has no legislation providing the right to adequate housing. The Directive Principles and Policies of the State stipulated in the Constitution, Article 26 (1), visualize the concept of housing and employment policies, but the principles are non-binding. As one of its activities in the Eighth Plan, the Government undertook to arrange settlement of landless people and provide them basic services. The Plan aimed to re-house some 25,000 families. However, the Government has been silent on whether or not it has been able to provide housing for them. Even if it was successful in accommodating 25,000 families, the number is insignificant compared to the 9 million people who still lack housing and food.

There is an acute absence of culturally appropriate low-cost safe housing policy for rural and urban areas. A large number of people in urban areas live in rented rooms and houses. In the absence of a regulatory mechanism, they are exposed to various tenancy-related hassles with the landlord and neighbours. At times, they are required to pay unreasonable rents or accept unfair terms of tenancy without any legal basis. This has severely affected a large size of the urban population. Furthermore, there is no law governing minimum safety and sanitation standards for rented homes.
Affordable housing finance from either the formal or the informal sector is not available. The average people are willing to build their own homes by borrowing money from the formal lending institutions but are unable to do so. Among the significant number of the population suffering from physical and financial problems to own a shelter, the underprivileged class are the worst affected, including the landless and agricultural labourers, the recently liberated Kamaiyas (bonded labourers), Halis, Gothalos, internally displaced people, the Dalits, dependants, destitute women, street children, aged, etc. One study indicates that the problem of housing for the poor people is most acute in the urban areas, particularly for the labourers and workers. To cite a single case, the study revealed that five daily-wage workers shared one rented room no larger than 10 feet x 11 feet for Rs. 500 per month in Kathmandu, but such warren-like living is not limited to Kathmandu alone.

The problem of squatting in public land, especially along the riverbanks in Kathmandu valley, is on the rise in the urban areas. A 1991 study reported 8.61 percent of the total population are squatting on public land and they fall under the poorest of all household tenure bracket. They are forced to squatting due to the lack of other options. The future of these people is always uncertain, for the Government can evict them from the area at any time. There have been quite a few cases of the eviction of settlers.

8. Rights of Women

Human rights instruments are usually interpreted as applicable to formal equality, with the intent to regulate the public sphere, but discrimination and violations against women predominantly occur in the private, intimate domain, especially within the family. Although the State does not directly violate women’s rights in the private sphere, it often supports or condones an exploitative family structure through various discriminatory laws and practices. Discrimination between males and females therefore starts in the family. Females are not included in the decision-making process, and opportunities and benefits available in the society are monopolized by males. Women’s participation in socio-cultural and political activities depends upon the attitudes of their husbands/fathers/parents/male relatives. It is therefore most important to guarantee women’s human rights not only in the public sphere but also in the private domain, including their rights within the family structure, ensuring women’s reproductive rights and sufficient economic resources to sustain them and their families.
More than 100 current legal provisions in several different domestic laws, including the Constitution itself discriminate against women. Many of these laws distinguish between married and unmarried women and the enjoyment of certain legal rights is fully dependent upon a woman’s marital status. However, as mentioned earlier, the recent 11th Amendment of the Muluki Ain aims at levelling these discrepancies and at promoting gender equality.

Nepalese women tend to face varying forms of oppression and violence, depending upon their class, caste or ethnicity. Women are victims of verbal and physical abuse; denial of adequate food may on occasion be deliberate (as a form of punishment for some perceived offence by the husband or an elder member of the family). In some traditional homes, women eat only after the family men, elderly and children have been fed. Women are also subjected to sexual exploitation, forced child marriage, forced repeated pregnancies to produce a son, “untouchability” status and isolation during menstruation, and as reported recently, incidents of violent abuse — sometimes death — have occurred in cases of unfulfilled dowry demands. In extreme cases, women are murdered for their failure to bear sons, for allegedly having extra-marital relations, or for denying sexual demands. Due to their social status and financial dependency upon their husbands, most women choose to remain silent and suffer from domestic violence in the interest of their children and family unity.

Additionally, women and girls at home, in public places and at the workplace are victims of various forms of harassment (verbal abuse, telephone harassment, sexual harassment). Medical practitioners have reported that injuries suffered by abused women include broken limbs, burns, rape-related injuries and sometimes-fatal injuries. Injuries sustained by female victims of violence are often seen as a result of “domestic issues” by the police, and therefore they are not recorded, even though such records are an important evidence of assault. Reportedly, 70 percent of the judges do not accept the idea of women having full rights over their own body; 58 percent believe it is not cruel to slap one’s spouse once or twice; and 52 percent maintain that women should tolerate such violent acts to preserve the honour of the family.

In recent years, there has been an alarming rise in the number of rural women accused of being a boksi (witch) and subjected to inhuman treatment. But it is interesting to note that while women are punished for alleged witchcraft, their male counterparts, the ‘witch doctors’ command fear and respect, once again illustrating the oppression and discrimination of women by men.
Woman and girl trafficking remains one of the severest forms of violence against women in Nepal. An estimated 5,000 to 7,000 Nepalese girls are trafficked every year, primarily for the sex industry in India. Each girl is sold for a sum varying between 25,000 and 50,000 Nepalese rupees. Of the hundreds of women who return from Indian brothels, nearly 50 percent are found to be HIV-positive.

The Muluki Ain has defined sexual intercourse with a girl below the age of 16 is considered rape, irrespective of her free consent. Likewise, consent obtained through intimidation, fraud, or use of force is not considered free consent. If convicted, the rapist must compensate the victim with half of his ansha, his share of family property.

In a survey of 71 victims of rape crime, a study also revealed the following disturbing facts:

- 54 percent of the 71 respondents reported that the police had mentally harassed them during their investigation, and

- 83 percent of the victims were given death threats or violent threats if they chose to appear in court. Prosecutors are said to have remained indifferent to such threats.

The 11th Amendment of the Muluki Ain provides for 10 to 15 years’ imprisonment for a victim under the age of 10, 7 to 10 years if the victim is between 10 and 16 years old, and 5 to 7 years if the victim is above 16 years of age. In case of gang rape or the rape of a pregnant or disabled woman, the punishment carries an additional 5 years’ imprisonment. The amendment not only has provided for in camera proceeding for rape cases, but also requires that the victim’s statement be taken by female police officers.

While the global trend shows that women tend to live longer than men, women in Nepal, on the average, have a life span which is shorter than men indicating their poor health conditions, which is primarily due to the pervasive gender discrimination they face from the very moment they are born.

Women’s low level of participation in politics shows a clear need for improvement. To this end, the Government introduced the Local Self-Governance Act that includes provisions to reserve one seat for women in each district and VDC. As a result, around 44,000 women were involved
in local governance. Nevertheless, a review of the candidature fielded by the ten major political parties for election of House of Representatives reveals that of the total 2,049 candidates, 1,906 were men (94.2 percent), and only 143 women (6.98 percent).

Women’s participation in the civil service is not encouraging either, as only 26 (4.02 percent) of the 647 Special and First Class Officers are women. The proportion of women employees declines as one moves up the administrative hierarchy. Total participation is less than 10 percent. It also explains why there is a lack of sensitivity in enforcing the provisions of the Constitution and international human rights instruments concerning gender equality.

Women’s health issues have drawn the attention of the Government, but a lot more serious work is needed to address the problems associated with Nepalese women’s health in a holistic manner. Abortion has now been decriminalized and a woman now has the right to have an abortion following a medical practitioner’s advice in the case of a pregnancy endangering the woman’s life, her physical or mental health, or if the pregnancy is likely to result in the birth of a disabled child. She also has the right to terminate her pregnancy by the 12th week, and by the 18th week in the case of pregnancy resulting from rape or incest. To promote women’s economic independence, the Production Credit for Rural Women project has helped women become credit clients and secure savings, increasing household incomes.

To some extent, certain laws support women’s right to reproductive health. The Civil Service Regulations 2050 (1993) grant a woman civil servant maternity leave with full pay for 60 days before and after child delivery, but this can be granted only twice during the full length of her service. Similarly, the Labour Regulations grant 52 days of maternity leave with full pay for only two children. However, many women have little or no choice where family planning is concerned and must submit to the husband’s wish to have more than two children, jeopardizing the woman’s employment and affecting her economic interest and independence.

The Government has begun to take some positive steps to address gender inequality. Daughters have been granted equal inheritance rights to ancestral/family property. But, the changes on inheritance rights have not been based fully on the principle of equality.

Violence against women and girls is a very serious problem. It is to be noted that the Domestic Violence (Crime and Punishment) Bill-2058,
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approved by the House of Representatives in April 2002, is under consideration in the National Assembly, which is virtually defunct due to the political crisis resulting from the absence of an elected Government.

The Government has established Women’s Police Cell in 16 districts and plans to establish such Cells in other districts as well. These Cells are created to properly handle women’s cases and also to encourage women to report crime against them.

9. Rights of Children

Children under 16 represent 41 percent of the total population, and while the proportion of child population between 0-14 years is increasing, the proportion of the economically active population (15-59 years) is decreasing.

The majority of Nepalese children live in rural areas, and most are uneducated, deprived of health care, leisure, and mental and physical development. Recent statistics indicate that the total number of working children between 5 and 14 years is 2.6 million, of whom the economically active children are 1.7 million, and many children are engaged in the worst forms of child labour. Thirty-four percent of the marriages involve children below 15 years, which is evidence that child marriage is not uncommon, especially in the rural areas where people adhere to traditional practices. Widespread poverty is the fate of nearly 47 percent of the children suffering from malnutrition that makes them more vulnerable to diseases. Diarrhoea alone kills 27,000 children every year.

In 1992, the Government enacted the Children’s Act, 1992. Among other aspects of children’s rights protection, the Act prohibits discrimination between sons and daughters in regard to upbringing and education, and prohibits the “offering” of girls to deities, a practice prevalent in some groups in Nepal. Other domestic legal instruments have children-related provisions such as the Muluki Ain which fixes the puberty age at 18 for boys and 16 for girls. The Labour Act and the Contract Act are two other instruments that affect children and the Election Law determines voting age. But, the definition of children followed by these Acts is inconsistent.

Besides the Government bodies and international agencies, nearly 240 NGOs active in the field of child development are registered in the country. Several hundred community-based organizations, educational institutions and media are also engaged in this field leading to some tangible progress. For example, bonded labour (Kamaiya), which used to
greatly affect children, was declared illegal and juvenile benches have been now established. Since 1995, the International Program on the Elimination of Child Labour has been working in 29 districts of Nepal and its activities have positively affected 13,500 children.

In the year 2002, The Child Workers in Nepal recorded a total of 4,506 incidents related to the exploitation of children such as sexual exploitation, child trafficking, forced prostitution, child labour exploitation, child death, missing children, children in armed conflict and children in conflict with the law.

Nepalese children continue to be victims of random as well as premeditated violence perpetrated by employers, by the State and by the actors in the armed conflict. According to a recent newspaper report, during the seven-year conflict, at least 110 children were killed, 62 by the State and 48 by the Maoists. Hundreds of children under 18, mainly high school children, were abducted by the Maoists to use them in various tasks. They were also targeted by the security forces.

There are nearly 5,000 street children in Nepal. They are exposed to crime, alcohol and substance abuse as well as sexual exploitation. In the year 2002, 91 cases of child sex abuse were recorded. Of the estimated 440 commercial sex workers in Kathmandu, 30 percent were children.

Children under 10 years of age are not criminally liable, and those in the 14-16 age group cannot be detained for more than 6 months for any offence punishable by imprisonment. While those children aged between 14 to 16 years are classed as minors, they are liable to half the adult fine and half the adult jail sentence. Except in urban areas, births are seldom registered in Nepal, and juveniles arrested for offences have reported that their date of birth was often falsified by the investigating officers.

Nepal’s Children’s Act provides that a child found guilty of an offence and subsequently imprisoned shall be kept in a juvenile rehabilitation home. The Act provides for the creation of such homes in which children can be placed, but due to a lack of resources these “children’s rehabilitation homes” have not yet been established. In November 2002, the Government adopted a new policy whereby the children of imprisoned parents were removed from jails and transferred to child protection centres run by the Nepal Children’s Organisation. In 2001, there were 27 children incarcerated in Nepal.
The majority of the children are arrested for petty crimes such as stealing small amounts of money, or drug abuse and public offences. If a child cannot afford a lawyer, the court has the obligation to provide one, but this provision is seldom enforced. In interviews conducted with 400 juvenile detainees, more than 80 percent claimed that their date of arrest had been falsified, and that they were not taken to court, or to the Chief District Officer’s office within the 24 hours following their arrest as specified by law.

10. Rights of the Janajatis

The first formal enforcement of caste principles and conduct on the basis of *Manusmriti* Code of Hindus in Nepal started as far back as the 14th century during the reign of King Jayasthiti Malla (1382-1395). The second attempt, and the most successful, was made by Jung Bahadur Rana, the first Rana prime minister of Nepal, by introducing the Muluki Ain in 1854 that effectively reclassified the population of Nepal into a four-fold Hindu caste hierarchy. This social structure included the Janajatis, even though they had never been a part of the Hindu social system. Later, the State also arrogated to itself the traditional customary laws and collective rights on land, forest, water, pasture and other resources collectively owned by the indigenous community. During the land reform movement in 1968, the Limbus lost their traditional autonomy over the *kipat* system (communal landownership).

Janajatis are those ethnic groups who have their own territorial areas, mother tongue, religions and cultures, but, as mentioned above, do not fall within the Hindu four-tiered *Varna* and associated caste hierarchy. It is interesting to note that there exists a certain degree of ambiguity regarding the status of the Janajatis and the status of indigenous people. While the Government has formally recognised the Janajatis this has not been the case with indigenous people. The ambiguity arises when some indigenous people are included in the list of Janajatis, but all Janajatis are not indigenous people. However, the Nepalese scholars in this field claim that in the case of Nepal almost all Janajatis (nationalities) are indigenous, and are therefore generally referred to as Janajatis.

The old constitution (1961) promoted Nepal as a Hindu State based on “Hindu Religion, Hindu Culture” (*Hindu Dharma, Hindu Sanskriti*), though the country had been a multi-religious and multi-cultural mosaic for nearly two centuries. The present Constitution (1990) explicitly states that no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological
conviction, and that no one shall be discriminated against as ‘untouchable’; be denied access to any public place, or be deprived of the use of public utilities. At the same time, the constitution declared, Nepal as a Hindu State ignoring the fact that Janajatis belong to several different religious groups such as Buddhism, Islam, Christianity, Kirat, Bon, etc.

Only after the restoration of multiparty system, the Janajatis came forward raising various issues directly related to their group/ethnic identity and human rights. The dominant influence of Hindu religion, customs and practices over the centuries had caused many of them to abandon their own culture and traditions in favour of Hindu customs and practices. For example, many Janajatis either abandoned their family names or simply appropriated Hindu names or so called high caste family names. The Limbus have started to cremate their dead, as Hindus do, instead of burying them, as was their traditional custom. Some have started to request the services of a Brahmin priest to conduct Hindu ceremonies in their homes as well.

Most of the public holidays are overwhelmingly in accordance with parbatiya (Hill) Hindu festivals. The majority of national heroes and symbols hail from the Hindu elite males. Indigenous names of rivers, mountains, lakes, gods/goddesses and festivals have been appropriated or changed by the dominant Hindu culture such as Sagarmatha, originally called Chhomolungma/Jhomolungma.

The State has declared Nepali as the only official language to the detriment of the Janajati languages. The Constitution specifies the right to operate schools up to the primary level in the respective mother tongue, but until a few years back most of the languages of the Janajatis had not been accepted in the school curriculum and Sanskrit was compulsory in most grades. Such practice violated the provision of equal treatment in respect to other languages. While the Government has gradually introduced school curriculum in different languages, implementation of the curriculum in the schools remains a problem due to the lack of teachers trained in teaching in other languages. The policy of one national language (Nepali) poses a serious threat to the survival of the many Janajati languages, sadly illustrated by the premature extinction of the languages of the Duras and the Hayus. Most Janajatis find it unfair that the Government policy stipulates that all official transactions must be made in the Nepali language. Therefore, although Nepal is a multi-ethnic nation, the State’s insensitivity to the language issue poses a problem.
Janajatis are under-represented in the civil service, the military and police and have disproportionate representation in the legislative bodies and political appointments. There is no ethnic representation in the Election Commission or in the Nepalese army above the rank of Major. In 1854, 98 percent of the top civil service positions were held primarily by Brahmin and Chhetris, a figure that came down to only 92 percent in 1998, representing a drop of 1 percent every 24 years.

The centuries-old economic and cultural relationship between the Janajatis and the natural resources is breaking up because of the policies alienating them from their natural resources for over 200 years. Hill migrants have appropriated Tharu lands and made them their Kamaiyas (bonded labourers); they have also taken over the grazing lands of the Tharus and are cultivating crops instead. Janajatis who do not possess land registration certificates are ineligible for Nepalese citizenship. Whenever they apply for citizenship papers, they often face harassment from uncooperative Government bureaucrats.

Janajati groups, meanwhile, have demanded, among other things, an end to constitutional and legal discrimination, the right to self-determination and autonomy and the preservation and promotion of all cultures by the State. The Government has consequently begun to take certain steps to improve the conditions of the Janajatis and to meet some of their demands. Radio Nepal now broadcasts news in Gurung, Tamang, Magar, Tharu, Limbu, Rai, Awadhi and Bhojpuri languages. Textbooks have been either published or are in the process of being published in Limbu, Tamang, Abadhi, Tharu, Rai, Magar, Newari and Maithili languages.

The Tenth Plan is proposing a quota of at least 25 percent of Janajatis among the total participants in various rural training programs. In an effort to alleviate poverty among the Janajatis, special grants and loans are planned for them especially in the education, agriculture and employment sectors.

## 11. Rights of the Dalits

While the old Muluki Ain of 1854 imposed a rigid caste system and segregated the society, the New Muluki Ain (1963) was instrumental in attempting to bring about important changes in the social sector. It attempted to abolish inequality among people and caste groups and ended the prohibition on inter-caste marriage.
Dalits occupy the lowest rank in the Hindu caste hierarchy as Sudras, or, ‘untouchables.’ It’s important to keep in mind that while the Janajatis were never a part of the Hindu social structure, Dalits are Hindus, and, therefore, expected to function within the framework of the stringent caste structure. The Dalits’ position at the bottom of the caste ladder makes them the primary victims of open discrimination and oppression. The word Dalit itself literally means ‘the oppressed’.

Dalits are scattered throughout the country, and because it has been difficult to differentiate between a Dalit and a non-Dalit, the exact number of Dalits can only be guessed – the 2001 census reports it to be around 3,030,067, but it is disputed by Dalit rights activists and the National Dalit Commission. While the Uppechhit, Utpidit ra Dalit Barga Utthan Samiti (Ignored, Oppressed and Dalit Groups’ Upliftment Development Committee) has identified 23 Dalit caste groups, the Parliament identified 28 Dalit caste groups in March 2002.

As noted earlier, the Constitution has declared that no person shall, on the basis of caste, be discriminated against as untouchable; be denied access to any public place, or be deprived of the use of public utilities. Any violation of this provision is punishable by law. It is also worth noting that the Verbal Abuse Act 1959 provides for punishing those who disrespectfully address people and humiliate them on the basis of their caste. But caste-based “untouchability” is widespread in Nepal. Dalits are, for instance, forbidden to share the same public water sources (taps and wells) with upper caste Hindus; to enter the kitchen of high caste groups or to share meals with or sit next to upper caste Hindus. Dalits who own a teashop or a hotel or eat in a high-caste house may be forced to wash the utensils they use. They are often prohibited from entering the public places—especially temples and religious areas—and from participating in religious festivals or even public gatherings. Such prohibition in places of worship are concerned has led many of the Dalits to turn to Christianity. Dalits are also relegated to exclusive caste-based “dirty” occupations, such as the disposal of carcasses, sweeping and cleaning public places, tailoring, metal work, etc. It is the worst violation of the Dalits’ human rights.

In general, Dalits constitute the poorest community in Nepal. One report concluded that Dalits do not hold less than 1 percent of the country’s agricultural land. The Terai Dalit is a synonym for the landless, who often works for the landlords. The children of Dalit servants also work often as cattle herders, or else help their parents in household chores. They receive food and clothing in return for their labour.
Dalit children, too, face discrimination and suffer from “untouchability” in many ways. Where free food is provided, in some schools, for instance, the high caste students and staff refuse to eat and drink together with them. Moreover, many high caste communities refuse to accept a Dalit teacher. Thus, even though Dalits work hard for others and contribute to their well being, they themselves remain hungry and poor.

Political parties also have exploited the Dalits for their own purpose. During elections, the Dalits become mere vote banks. Political parties and leaders never encourage Dalits to become candidates, and their representation in various public, private and Governmental institutions is therefore insignificant. Unlike women, Dalits are not granted any quota in the socio-political arena.

Dalit women face the worst conditions and oppression in the Nepalese society. They face the dual burden of being subordinate to their men at home and caste discrimination and exploitation in public. Inter-caste marriage between an upper caste boy and a Dalit girl is socially disapproved, if not totally unacceptable. If she does marry, she is most likely to face mental and physical abuse in the upper caste home. Because of their ‘untouchability’, Dalit women have difficulty finding jobs in certain profitable enterprises such as teashops, hotels and restaurants. There is little awareness among Dalit women of birth control and pregnancies occur every year. As Dalits do not have easy access to safe drinking water, they suffer from various gastrointestinal diseases. Poverty, ignorance and societal discrimination have forced many Dalit women and young girls to become commercial sex workers; many are also lured by brokers and trafficked to the Indian sex industry. They seldom seek recourse to redress the wrongs inflicted upon them because they are often acutely aware that they belong to the despised and discriminated ‘untouchable’ caste.

Dalit groups are fighting back the open, caste-based prejudice, discrimination and intolerance they face in the Nepalese society and have demanded an amendment in the present Constitution with strong provisions to end all types of discrimination and to ensure effective implementation of the existing legal provisions to root out unsociability and to ensure Dalit ownership of land and resources, quotas in Government bureaucracy, the police and the military, as well as representation in the policymaking bodies at the national level.
The Government has initiated some positive steps to improve the conditions of the Dalits. The Tenth Plan features proposals to provide the Dalits with access to suitable agriculture technologies and products; to involve them in food-for-work program; to ensure their participation in various rural trainings; to provide scholarships for poor and bright Dalit children; to provide arrangements for leasehold forest within community forests; and in order to alleviate poverty among the Dalits, to provide training and financial assistance, especially in the agricultural, educational and employment sectors.

If the State fails to make determined efforts soon to eliminate untouchability and other forms of discrimination and prejudice, it may have to face serious conflicts in many forms in the future, of which the seven-year-old Maoist insurgency may be only one example.

12. Rights of the Senior Citizens

Ageing is a natural process and unavoidable part of life. Life expectancy in Nepal is now 59 and 58 years for the male and the female respectively. An estimated 5 percent of the Nepalese population is over 65 years. The retirement age for the Supreme Court judges and heads of constitutional bodies is 65 while the retirement age for civil servants is 58 years.

The UN Principles for Older Persons call upon Governments to act in all areas, but especially ensure that older people have access to food, water, shelter, clothing, health care, work and other income-generating opportunities, along with education and training. Furthermore, they should be able to live in “dignity and security, be free of physical or mental exploitation.” The Constitution of Nepal in its Directive Principles and Policy of the State states that the State shall pursue education, health and social security policies to protect the aged.

The loneliness and physical and mental health of the aged people are some of the major issues. Many elderly people in Nepal are seen to be facing such tortures. Elderly women face more problems than their male counterparts because of lack of access to income, severe health problem due to poor reproductive health at a younger age and gender-based discrimination in labour.

Traditionally, elderly parents lived with their grown-up children and the children took care of them. However, today’s modern society is eroding the traditional extended and nuclear family structures and the values which made children responsible to look after their parents are also
becoming weak. In recent times, old people have had to fend for themselves as their sons and sometimes daughters leave for the urban areas, or foreign countries to pursue their study or in search of employment. The armed conflict has further aggravated the plight of elderly, especially in rural areas where many elderly people have been left behind by the youth eager to escape both the Maoists and the security forces.

Some elderly people are also being compelled to leave their homes because of internal conflicts within the family. Such conflicts are often rooted in generation clashes, the younger members of the family no longer believing in or giving importance to caste discrimination or “untouchability” practiced by the elders, or no longer practicing daily religious rituals or adhering to religious practices, that create constant tensions in the family home. The elders in turn begin to feel neglected and resent the absence of “due respect” they expect from the younger generations.

The demand for Briddhashram (home for the elderly) is on the rise, because the State sponsored Briddhashram is unable to meet the demand. Other homes for elderly have been established privately throughout the country, and there are now nearly 32 organizations focusing on the welfare of elderly people, of which two are devoted exclusively to sheltering elderly women. However, due to the scarcity of funds and/or human resources, most of these homes lack proper management and facilities.

Traditionally, the elderly Nepalese prefer to live among their own family members. In a survey conducted by the NHRC, the elders claimed that as long as they held legal ownership of their assets and property, their family and relatives would take proper care of them. The thought of spending one’s remaining days among strangers in a strange ‘home’ doesn’t appeal to most of these elderly people. Therefore, most of them will seek refuge in a home only if there is no other alternative for their survival and welfare.

The Government has stepped in an effort to alleviate the problems faced by elderly people. Elderly people over the age of 75 are now entitled to Rs. 150 per month, and Rs. 60 per month is granted to the impoverished widows. There have been, however, occasions when these allowances have not been disbursed on a regular basis. The Government has also established a Senior Citizen Care Service Program in 15 districts. This programme can provide a one-time annual grant of a total of Rs. 4,000 or in two instalments of Rs. 2,000 per year to the most destitute of the elderly.
people. The civil servant retirees receive a monthly pension not less than 50 percent of their salary at the time of retirement.

The National Planning Commission prepared a ‘Senior Citizens National Plan of Action, 2059’ (2002 A.D.), which provides for some financial aid to the elderly people, health care, participation in programs as well as enactment of laws related to elderly people’s educational and recreational activities and protection and promotion of the rights of the elderly people. This five-year National Plan of Action will be implemented from 2002 to 2007. A Senior Citizen’s Bill has similar proposals, but it is yet to be enacted by Parliament.

Absence of research on the issues affecting elderly people has certainly not helped to build a good knowledge base to formulate appropriate policies and programmes to address the problems and issues of the elderly people. In the present situation, it seems that while the Nepalese society claims to respect and take care of the old, the real situation is the opposite: it forgets them once they grow old.

13. Rights of the Disabled People

The real magnitude of disability prevalent in Nepal is not clear due to the absence of reliable data. Disability is traditionally seen as a result of sins committed in one’s past life, though the main causes of disability are poverty, lack of adequate health care facilities and lack of early identification and preventions services. Sayings such as “the deaf are crooks” and “one cripple can outsmart a hundred able-bodied rascals” are emblematic of the traditional society’s prejudice toward the disabled. As a result, the people with disability often face social and psychological hurdles within their family and community in Nepal. Unfortunately, persons with disabilities have to rely almost exclusively upon family for support and sustenance. Families are often ashamed of family members with disabilities.

The Universal Declaration of Human Rights calls for equal treatment. Likewise, the UN Declaration on the Rights of the Disabled Persons, 1975, which has been recognised by Nepal in 1981, is a specific international instrument protecting and promoting the rights of the people with disability. In addition, the Directive Principles and Policy of the State in the Constitution specifies that the State shall pursue education, health and social security policies to protect the disabled and incapacitated.
These international declarations on disability have prompted the Government to introduce the Disabled Persons (Protection and Welfare) Act 1982 (B.S. 2039), and policies regarding its population with disability. The Act was introduced to protect and promote the rights of the disabled. It stipulates that persons with disabilities shall not be discriminated upon in employment in the public or Government sector, unless their specific disability prevents them from carrying out their duties. The Act also stipulates that people with disabilities shall be granted full access to all social, cultural and educational organizations, and that educational and training centres shall not charge them any fee. Additionally, those who deliberately, and for any reason, incur disability in themselves or others in order to draw profit from it shall be punished.

The deaf children’s access to education is very limited – only 1 percent of the total deaf children have access to education. The designs of public utilities and buildings as well as private households are not friendly to the people with special needs. A recent study, commissioned jointly by the National Planning Commission and the United Nations Children’s Fund, on the disability situation highlighted the need to improvise the furniture and facilities used by the disabled. Many families see the disabled as a financial burden and large majority of disabled feel that they find it hard to live with self-respect in their community. The Government living allowance of NRs 100 per month to the poor and helpless disabled people is clearly inadequate. In 1996, the National Plan of Action for the Disabled was formulated. It was to be implemented in three phases, starting from 1996. One study has, however, indicated that the policies and Plan of Action had not been satisfactorily implemented. While laws guaranteeing educational, health, political, economic and social rights and freedoms of the disabled exist, Government has not been perceived to be actively pursuing their enforcement.

The Government has made some progress in alleviating the pain and prejudice faced by the disabled. It has established community-based rehabilitation programs in thirty-five districts in cooperation with local NGOs. It has expanded preventive health services, started employable skill development programmes, and worked to raise public awareness on the issue. Special education programme for the children with special learning needs is being implemented in 23 districts.

Meanwhile, there is an urgent need to pay attention to the fact that the number of people with disabilities in the country has increased over the 7-year period of the armed conflict. While the number of deaths resulting from the conflict has been established (over 7,000 as of June 2003), no
data has been collected by the State yet as to those who were wounded and maimed during these years of violence.

14. Governance

The most cherished hope of the Nepalese in the post-Panchayat era was that a rights-based Government, respectful of the people’s wishes and aspirations for a free, open and lawful society, would emerge. Unfortunately, the successive elected Governments failed to address successfully the hopes of the people. The failure of the leaders to integrate and bring the minorities into mainstream politics has resulted in the increasing fragmentation of the Nepalese society, as witnessed in the emergence of identity politics, ethno-politics, language politics, gender politics and regional politics—all of which have coalesced to intensify alienation. The political leadership of the multiparty system tends to encourage the influence of “money, muscle and mafia” in politics rather than concentrating on combating criminal activities in the political sphere. Thus, the first four Governments since 1990 encouraged criminal activities to political ends and the politicisation of crime by withdrawing 563 criminal cases, turning them into vague political cases, including cases against the senior political leaders of various parties. A study conducted by a NGO in 1999 covering over 30 years of governance (1966-1999) revealed that almost every Government, prime minister and prominent political personality were involved in a wide range of major scandals, from smuggling wood, snake skins, hides and leather to selling radioactive milk from Chernobyl or even rape and murder attempts.

The politicisation of State organs (including bureaucracy and law enforcement agencies) and the non-political sectors (e.g., education) have further contributed to the erosion of fundamental human rights in the country. Moreover, the inability to prevent the illegal accumulation of public wealth, particularly by those in power, has seriously challenged the citizens’ right to get a better return from their tax money. Since 2000, the Commission for the Investigation of Abuse of Authority (CIAA) has made commendable progress in investigating corruption among the politicians and civil servants, and the Parliament recently has enacted a bill granting more authority to the CIAA. It is hoped that the recent strengthening of the CIAA will reverse the negative effect of such criminal activities in the governance sector.
The rights to vote, to become a candidate and to participate freely in the entire electoral process have also been often and seriously violated, impeding progress towards good governance. In the last three parliamentary (1991, 1994 and 1999) and two local elections, activities contrary to the process of free and fair election included: electoral rigging, *booth capturing* by the larger parties, bribery, extortion, vote buying, unauthorized proxy voting and under-age voting, use of power, force and violence by the Government or larger parties, and general negligence shown by electoral authorities as well as the Government and political parties in the observance of the Code of Conduct related to the election process.

The introduction of “voters identity cards” (electoral cards) has to some extent reduced the irregularities and rigging in elections, but technical problems such as errors in names, age, etc. on the cards and non-registration of voters of opposition parties in some VDCs have prevented many citizens from taking part in elections.

Political power continues to be monopolized by the predominantly male elite who belong to the dominant Brahmin-Chhetri castes, accentuating the politics of alienation as well as fanning the flames of resentment.

The Constitution requires that women comprise at least 5 percent of each party’s candidates for the House of Representatives. The women selected were granted candidacy for weak constituencies where the probability of their defeat was high. For example, out of Nepali Congress’s total 205 candidates contesting during the 1999 parliamentary elections, only 14 were women, of whom five were elected; the Communist Party of Nepal-Unified Marxist-Leninist fielded 12 women out of its total 194 candidates, and 6 women candidates were victorious; the Rastriya Prajatantra Party had 14 women from its total 197 candidates, with only one woman candidate elected. None of the women candidates of the other parties gained a seat. Overall, the percentage figure for women’s representation in the major parties still fluctuates between 5 and 7.

Most political parties in the 1999 parliamentary elections failed to nominate Dalits and other minority groups in their official list of candidates.

When the concept of bicameralism was adopted in the 1990 Constitution, the Dalits, Janajatis, women and other minorities expected that it would improve their representation at all levels in the Government and also that their right to participate in the political process would be promoted. But
the trend of the past 12 years shows that the Upper House has been the predominant reserve of the high caste groups at the expense of the minorities. Thus, in 1998, of the existing 56 members in the 60-member National Assembly, 30 were Brahmins, 7 Chhetris and 8 Newars. Only 8 members belonged to other caste groups, including 2 from the so-called ‘untouchable’ castes. Women, however, are ensured representation at the Upper House by the Constitution that reserves three seats for them.

The enactment of the Local Self-Governance Act 1999 (B.S. 2055) has attempted to initiate positive changes in the local self-governing bodies, especially in granting them greater authority and autonomy regarding decisions affecting local governance. The Act also aims to encourage local people’s participation in the political process, but the local bodies have not been properly empowered yet and they lack adequate resources as well as training in accountability and transparency.

The formation of the National Human Rights Commission, the National Women’s Commission, the National Dalit Commission and the National Foundation for Indigenous Nationalities are some of the positive steps taken by the State to integrate and have mainstream those who have been excluded so far.

The introduction of voter identity cards, despite technical problems causing violation of right to vote, has undoubtedly reduced the irregularities and rigging in elections to some extent. Likewise, the recent amendment of CIAA Act to make its work effective is a significant milestone in the history of governance in Nepal.

The enactment of the Local Self-Governance Act has brought significant changes in promoting people’s participation in the political process and in improving development planning at the community level. A number of positive initiatives, including transfer of primary schools and sub-health posts management to the local community, have been taken with a promise to support the local bodies with sufficient financial, material and human resources necessary for effective management.

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15. Conclusion

Since the restoration of the multiparty system in 1990, the Government of Nepal has demonstrated an overall encouraging attitude towards the respect and promotion of human rights by accepting human rights as one of the foundations of the Constitution. It has ratified over a dozen major international human rights instruments, formed the National Human Rights Commission and established commissions or councils for women, Janajatis and Dalits. In the Tenth Plan, the Government has initiated a National Human Rights Plan of Action. Other encouraging indicators include the enactment of the Torture Compensation Act, the State Cases Act, the Legal Aid Act, the Children’s Act and the more recent 11th Amendment of the Muluki Ain for gender equality. These developments build up a structural mechanism for the enforcement and protection of human rights in Nepal. However, numerous domestic statutes still exist that contravene both the international human rights law and the Constitution of Nepal. Although a number of new statutes have been enacted, they are not aligned with the provisions contained in international human rights treaties and conventions. Those that have been ratified are poorly implemented, or merely ignored. Prompt initiatives should be considered and taken to ensure the effective integration of human rights in Nepal’s domestic legislation.

Certain draconian laws, some of them going back to the partyless Panchayat era, still remain in operation. This was the case particularly during the nine-month state of emergency when enforcement was vigorous and curtailing the fundamental rights such as the right to peaceful assembly, the right to freedom of opinion and expression, the right to fair
trial, etc. Such laws and enforcement applications could be deemed regressive in the context of human rights in Nepal.

The initial years of the 3rd millennium remained alarming and disappointing for Nepal in the sphere of the overall human rights situation in the country: a marked increase in the incidents of serious violation of human rights from both the State and the Maoists was in evidence. The security situation deteriorated to the lowest. The trend of citizens’ killing escalated incredibly higher in 2001 and 2002 causing gross violation of right to life.

The Nepalese people in general have come to realise that the State has not been successful to satisfactorily guarantee the fundamental and inalienable rights they possess as citizens of Nepal. Similarly, the people — especially women, Janajatis, Dalits and other religious groups and linguistic nationalities — are aware of the fact that discrimination, prejudice, untouchability and other forms of intolerant and unfair socio-cultural practices persist in Nepalese society, despite the Constitution’s guarantee that all citizens are equal by law, and that no citizen shall be discriminated on the basis of sex, ethnicity and caste.

Efforts towards the achievement of rights-based governance have also been hampered by entrenched traditional discriminatory practices as well as by indifference, sometimes resistance, on the part of concerned Government bodies, political parties and official authorities. Indeed, while laws, within their own limitation, exist at all levels to guarantee equality and freedom, they are often ignored or weakly applied, rendering them ineffective. It is therefore crucial to recognize that beliefs and laws that promote discrimination, prejudice and social exclusion pose serious obstacles to the achievement of good governance. Where beliefs are concerned, the need for human rights awareness and understanding should be considered as a long-term process to effective transformation. Only then will the people of Nepal — men or women, high caste or low, a Janajati or Dalit, young or old — be assured of the protection of their human rights and feel free.

Impunity

Violation of law by the State authorities and by the non-state parties is quite common in Nepal. The trend has intensified since the start of conflict between the State and the Maoists in 1996. Arbitrary arrests, detention, torture, disappearance of ordinary citizens and journalists have been widely practiced. The reported death of journalist Krishna Sen in police custody and the illegal arrest and detention in army camps of two
Muslim girls by the Army in Nepalgunj Army Camp are two such incidents. The army, police and State bureaucracy ignore the instructions of the NHRC to investigate and report on the human rights violation complaints filed in the Commission against the alleged perpetrators.

There are a number of incidents in which the bureaucracy or the police blatantly ignored the Supreme Court orders and got away with it. People who should be punished for their disrespect to human rights norms are often awarded, promoted or transferred instead of making them accountable for their action. The mindset that one can get away with such act is very strong and widespread among the authorities. The Asian Human Rights Commission reports that such mindset is not only nurtured indirectly by political parties, but is also effectively protected by them. Moreover, the practice of State taking the sole responsibility for punitive compensation on the violation of human rights by its staff without taking any punitive action on the staff concerned does not discourage officials from violating the rights of the citizens. The case in point is NHRC’s decision of May 2001 (Jestha 2058) requiring a Chief District Officer and Head of District Police to share 5 percent and 2.5 percent respectively of the total compensation amount, which was not followed by the State. The State paid the entire sum to the victim. In this regard, NHRC has drawn the Government’s attention that such practice encourages impunity.

The Damocles Network and Reporters Without Borders have placed Nepal on “The Impunity Black List” which includes twenty-one countries, where impunity is commonplace. The organisations based their rating on the events that took place since declaring a state of emergency on 26 November 2001. Likewise, the Asian Human Rights Commission writes that in Nepal, “Violation of Human Rights Becomes Government Culture.” The Commission also notes that atrocities and brutalities during the democracy movement were heinous, but the subsequent Government did not take any action to punish the human rights violators therefore impunity in the violation of human rights has been a part of the culture of Nepalese Government since the restoration of multiparty system. Criminalization of politics by certain political parties has further aggravated the situation. Amnesty International states in its Annual Report 2002: “Impunity in Nepal is an entrenched political culture dating back to the period before the introduction of multiparty democracy in 1990.”

An exploratory study on the subject reports that the majority of people who are denied justice by not redressing the crimes committed against them belong to the poor and the disadvantaged groups, who are often
illiterate and unaware of their rights. The study found that even those who are aware find the social practices standing in their way to redressal.

The reasons for widespread impunity can be broadly categorised into political context, discussed in the chapter dealing with the issue of governance, and the absence of as well as lack of strict implementation of legislative provisions, discussed throughout this report. Another important context is the social setting of Nepalese society which promotes and sustains quite a few wrong social norms, such as the practice of appeasement and soliciting favours by means of gifts and personal relations that directly contribute to incompetence in the State machinery and malpractice.

Widespread impunity is the main reason for the deteriorating human rights situation in Nepal. Until and unless adequate measures are taken to remedy the situation, improvement in the overall human rights situation in the country will remain an untenable goal.

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i In these recommendations, “human rights” means those minimum international standards by which Nepal is bound. Those standards include the relevant treaties, customary international human rights and humanitarian law together with the declarations and principles on human rights and humanitarian law adopted by the United Nations. In view of the fact that these recommendations draw on the international texts, in case of disparity of language, the English language version of these recommendations prevails. Nothing in these recommendations may be used to undermine the existing human rights standards applicable to Nepal or to undermine the Statutory mandate and powers of NHRC.

ii These recommendations flow from the treaty standards Nepal has undertaken, as authoritatively elaborated by, for example, the UN Declaration on the Prevention of Involuntary or Forced Disappearances; the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, GA Resolution 53/144 (Human Rights Defenders); the codified standards in the UN Guiding Principles on Internal Displacement (General Assembly Resolution 53/144 9 December 1998); as well as UN Security Council resolution on Women, Peace and Security of October 2000, S/RES/1325.

iii This recommendation concerning the right to life draws on the treaties to which Nepal is a party, as well as drawing on the authoritative standards

iv As outlined in the Code of Conduct for Law Enforcement Officials (previous endnote), the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. When police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials includes officers of such services.

v Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged; (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

vi Drawing in particular on General Comment 20 of the Human Rights Committee established under the International Covenant on Civil and Political Rights; and General Comment on the Implementation of Article 3 of the Convention Against Torture, by the Committee against Torture.

The International Covenant on Civil and Political Rights also Provides that “Except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the HMG so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

In 1998, Francis M. Deng, the Representative of the UN Secretary-General on Internally Displaced Persons, presented a set of "Guiding Principles on Internal Displacement" to the UN Commission on Human Rights which are regarded as codifying the international legal standards applicable. The 30 principles address all phases of displacement—providing protection against arbitrary displacement, offering a basis for protection and assistance during displacement, and setting forth guarantees for safe return, resettlement and reintegration.

For the Declaration on Human Rights Defenders, see note 2 above.


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